S. HRG. 100-256

HANDGUN VIOLENCE PREVENTION ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 466

A BILL TO PROVIDE FOR A WAITING PERIOD BEFORE THE SALE, DELIVERY, OR TRANSFER OF A HANDGUN

JUNE 16, 1987

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HANDGUN VIOLENCE PREVENTION ACT OF 1987

TUESDAY, JUNE 16, 1987

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard M. Metzenbaum presiding.

Also present: Senators Hatch and Specter.

Staff present: Mary Louise Westmoreland, counsel; Eddie Correia, chief counsel; Lisa DeFusco, staff assistant, Subcommittee on Antitrust, Monopolies and Business Rights.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. The subcommittee will come to order.

I firmly support the ability of law-abiding citizens to purchase firearms for hunting, target shooting and for self-defense, but I am equally firm in my conviction that we must take reasonable steps to keep handguns from criminals, the mentally disturbed, and persons temporarily overwhelmed with violent passion or despair.

S. 466 simply requires individuals to wait 7 days before they obtain a handgun. It provides that the police be forwarded the names of prospective handgun purchasers. This simple—and it is a very simple and modest step—can save lives, lives of those victimized by criminals, lives of those endangered from enraged or mentally disturbed individuals, and lives of those who may take their own life in a moment of despair.

There are hundreds and hundreds of examples of handguns used to kill shortly after they were purchased. Instant access to handguns leaves many victims, including the loved ones left behind. One such victim is a young man from my own city who is here today to talk about the day in December of 1981 when a deranged ex-convict used a recently purchased handgun to kill two women in the Cleveland Public Library. But perhaps the saddest cases of all involve our young people, suicides which could have been prevented if the means of self-destruction had not been so readily available.

No law-abiding hunter, no law-abiding sportsman will be denied access to any firearm by this legislation. And I want to repeat it again, no law-abiding hunter or sportsman will be denied access to a firearm by reason of this legislation, and I will go further and say that no law-abiding citizen will be denied access to a handgun by reason of this legislative proposal.

Any law-abiding citizen who wants a handgun for self-protection will still be able to purchase one, with a 1-week delay, but an exception is even provided for that 1 week under extraordinary circumstances, where the exigencies of the moment require it. Today, it is easier to buy a lethal weapon than it is to cash a check.

A 1981 Gallup Poll reported that 91 percent of all Americans favor a waiting period for handgun purchases. S. 466 is a pro-law enforcement measure, one which enables law enforcement officials to better serve the public they are sworn to protect.

To date, six major police organizations, representing over 300,000 police officers, have endorsed S. 466. For too long, we have heard the irrational cry from some that any limitation on the purchase of a gun is somehow a threat to law-abiding citizens. That argument grows more absurd each day as innocent victims are slaughtered by one of the thousands of handguns available at a moment's notice from the local hardware store.

This simple bill places no unreasonable burden on anyone in this country, but it can spare many from violent death and injury.

[Text of S. 466 follows:]

II

100TH CONGRESS
1ST SESSION

S. 466

To provide for a waiting period before the sale, delivery, or transfer of a handgun.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 1987

Mr. METZENBAUM introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To provide for a waiting period before the sale, delivery, or transfer of a handgun.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Handgun Violence Prevention Act of 1987".

SEC. 2. (a) Section 922 of title 18, United States Code, is amended by adding at the end thereof the following:

"(p)(1) It shall be unlawful for any person to sell, deliver, or transfer a handgun, otherwise permitted by law, to an individual who is not licensed under section 923 unless—

"(A)(i) such transferor, before delivery of the handgun and within one day after the date the trans-

feree proposes such transfer, has sent, by registered or certified mail (return receipt requested), a copy of a sworn statement by the transferee to the chief law enforcement officer of the place of residence of the transferee notifying such officer of the proposed transaction; and

"(ii) seven days have elapsed from the date such sworn statement was sent and such transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal law or of a State or local law of the residence of the transferee; or

"(B) the transferee has presented to the transferor a certificate from the chief law enforcement officer of the place of residence of the transferee which states that the transferee requires access to a handgun because of a threat to the life of the transferee.

"(2) Nothing in this subsection shall be interpreted to require any action by a chief law enforcement officer which is not otherwise required.

"(3) The sworn statement referred to in paragraph (1) shall contain only—

"(A) an accurate description of the handgun which is the subject of the proposed transaction;

"(B) the serial number of the handgun;

"(C) the name, address, and date of birth appearing on a valid piece of the transferee's personal identification containing a photograph of the transferee and a description of the identification used;

"(D) a statement that Federal law does not prohibit the receipt of the handgun by the transferee; and

"(E) the date the sworn statement is made.

"(4) Any transferor who receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee is in violation of Federal law or of State or local law of the residence of the transferee, after a handgun has been transferred to the transferee, shall immediately communicate all information such transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of—

"(i) the place of business of the transferor, in the case the transferor is a licensed importer, licensed manufacturer, or licensed dealer; or

"(ii) the place of residence of the transferor, in any other case; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection

shall not disclose such information except incident to the proposed transaction.

"(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the sworn statement of the transferee with respect to the handgun transaction for at least one year after the date the transaction is completed.

"(B) Unless the chief law enforcement officer to whom a copy of such sworn statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall destroy such copy within 60 days after the date the transferee made such statement.

"(7)(A) Notwithstanding any other provision of this title—

"(i) any dealer who violates the provisions of this subsection shall be fined not more than $1,000, or imprisoned for not more than one year, or both; and

"(ii) any individual who willfully violates the provisions of this subsection shall be fined not more than $500.

"(B) The penalties provided in this paragraph shall be the only penalties imposed for a violation of this subsection.

"(8) For purposes of this subsection, 'chief law enforcement officer' means the Chief of Police, the Sheriff or an equivalent officer or the designee of any such individual.

"(9) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.".

(b) This section and the amendments made by this section shall not apply to dealers until 90 days after the date of enactment of this Act and shall not apply to individuals other than dealers, until 6 months after such date of enactment.

SEC. 3. Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following new paragraph:

"(25) The term 'handgun' means a firearm which has a short stock and is designed to be held and fired by the use of a single hand or any combination of parts from which a handgun can be assembled.".

SEC. 4. Section 924(a)(1) of title 18, United States Code, is amended by inserting section 922(p), after "section," the first place it appears.

SEC. 5. Section 927 of title 18, United States Code, is amended by—

(1) inserting "(a)" before "No"; and

(2) adding at the end thereof the following:

"(b) A provision of State law is not in direct and positive conflict with section 922(p) if such provision provides—

"(1) for a waiting period of at least 7 days before the transfer of a handgun; or

"(2) that, before a handgun transfer is completed, a law enforcement officer shall determine that the transferee is qualified under law to receive a handgun.".

Senator METZENBAUM. We are very pleased that the House proponent of this legislation, a close friend of mine, is here today testifying in behalf of S. 466 as well as his own bill.

Congressman Feighan, we are very happy to welcome you this morning.

STATEMENT OF HON. EDWARD F. FEIGHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. FEIGHAN. Thank you very much, Senator Metzenbaum. Let me congratulate you for scheduling this hearing today and particularly for your leadership in sensible gun control legislation in this country. I must underscore that I am particularly pleased to be here joining you in this effort, because I represent Mrs. Metzenbaum in the U.S. Congress, since she lives in my district, as does the Senator.

I am here today representing my views, the views of many of my colleagues, certainly the views of Handgun Control, Inc. as well as the National Rifle Association, that is to say the policy views of the National Policy Association just a few years ago. It is interesting for me to notice in one NRA fact book, issued just a few years ago, where they described what they have characterized as a reasonable regulation, their then policy on a national waiting period.

They state in the National Rifle Association fact book,

> A waiting period could help in reducing crimes of passion and in preventing persons with criminal records or dangerous mental illnesses from acquiring guns. A waiting period should be clearly specified, fixed and reasonable in time, after which the firearm should be delivered unless the purchaser is disqualified by the police.

I supported that view of the National Rifle Association when it was published as a stated policy of their organization, and I continue to support that view today. Each year, we know that there are 7,500 Americans who are murdered with handguns, and another 13,000 are victims of handgun suicides or accidents. Sixty-four percent of the police officers killed in the line of duty are shot down with a handgun.

In our home county of greater Cleveland, OH, handguns are used in 50 percent of all homicides. In Cleveland, the four police officers who have been killed since 1980 have all been handgun victims. It is inconsistent, I think, to talk about fighting crime or protecting the public safety without also taking steps to keep handguns away from those who will misuse them.

Nineteen years ago, the Congress did pass laws which prohibit convicted criminals, the mentally incompetent and drug abusers from buying handguns, but they have not worked, and today in many cities any criminal, as you have suggested, Senator, any criminal can walk into a gun shop, sign a statement and 10 minutes later walk out with a handgun.

Our legislation, identical legislation, as you have indicated, is simple, reasonable, and effective. It would require a 7-day waiting period for the purchase of handguns. After that period, all handgun sales could be completed unless local law enforcement officials found that the sale would violate law and communicated that to the seller.

The Handgun Violence Prevention Act would be a valuable law enforcement tool, giving police the chance to keep handguns out of the hands of criminals and the mentally ill. And it would provide as well a "cooling off" period, stopping handgun purchasers from buying and using a gun on impulse. Local police would not be required to run record checks, but they would have the option to do so. This bill would then put no new burdens on handgun purchasers or owners.

A broad coalition of groups have endorsed this legislation, including 5 national law enforcement organizations. Moreover, 9 out of 10 Americans support a reasonable waiting period law.

A few years ago, as I indicated, we would have listed the NRA as a supporter of this legislation. In that past statement, they supported specifically a waiting period. Why? Because waiting periods work and they understand that. In States and localities across this country, waiting periods have been preventing criminals from purchasing handguns. In California, a 15-day waiting period screens out 1,200 noneligible applicants for handguns each year. In New Jersey, the combined waiting period and background check have led to the apprehension of 10,000 convicted felons in the last 19 years. But until we have a national waiting period law, determined criminals will continue to go to States without gun control laws and buy their handguns with ease.

We cannot afford to base our public policy on the gun lobby's misleading rhetoric, especially when handguns continue to kill 20,000 Americans each year. Public safety and public sentiment demand that we take reasonable steps available to us.

Mr. Chairman, thank you again for the opportunity to address the subcommittee but particularly the opportunity to join with you in seeking passage of this important legislation.

Thank you.

[The prepared statement of Mr. Feighan follows:]

STATEMENT OF REP. EDWARD F. FEIGHAN
ON THE HANDGUN VIOLENCE PREVENTION ACT
JUNE 15, 1987

Mr. Chairman:

I appreciate this opportunity to speak before the Senate Judiciary Committee's Subcommittee on the Constitution about the "Handgun Violence Prevention Act," S 466. I am the sponsor of identical legislation in the House, H.R. 975.

Each year 7,500 Americans are murdered with handguns. Another 13,000 or more are victims of handgun suicides and accidents. 64 percent of the police officers killed in the line of duty are shot down with a handgun. In Cleveland, the four police officers killed since 1980 have all been handgun victims. In my home county of Cuyahoga, 57 percent of all homicides involve handguns. It is inconsistent to talk of protecting the public safety without taking steps to keep handguns away from those who will misuse them.

Nineteen years ago Congress did pass laws which prohibit covicted criminals, the mentally incompetent and drug abusers from buying handguns. But the sad fact is that in most states and localities, federal gun purchase laws are not protecting anyone. In many localities, criminals and mentally ill persons can walk into a gun shop, sign a statement, and walk out with a leathal weapon. In my district, a patchwork of municipal laws do not give local police a chance to keep criminals away from these handguns.

Our legislation is simple, reasonable and effective. It would require a 7-day waiting period on the purchase of all handguns. After this period, all handgun sales would be allowed to go through unless local law enforcement found that the sale would violate law.

A national waiting period law would be a valuable law enforcemnt tool, giving police the chance to keep handguns out of the hands of criminals and the mentally ill. And it would provide a "cooling off" period, stopping handgun purchasers from

buying and using a gun on impulse. Waiting periods work: in states and localities all over America they have stopped thousands of illegal gun sales from going through. In California a 15-day waiting period screens out 1,200 noneligible applicants for handguns each year. In New Jersey a combined waiting period and background check have led to the apprehension of 10,000 convicted felons in the last 19 years. But until we have a national waiting period law, determined criminals will continue to go to states without gun control laws and buy their handguns with ease.

It is also important to point out what this bill would not do. The Handgun Violence Prevention Act would not require the police to run a record check on any gun purchaser. Those wanting to buy a gun would not have to acquire a permit or any form of verification from the police before their purchase. This bill would put no new burdens upon handgun purchasers or owners -- it would simply give local police the chance to keep handguns out of the hands of criminals and the mentally incompetent. Since no police record check on handgun purchasers is mandated by this legislation, no additional expenditures by local, state or federal agencies would be required.

This legislation does not require you to demonstrate whether you are pro-gun or anti-gun, but whether or not you want to give police the ability to enforce the gun purchase laws that are now in place. You are not being asked to limit the rights of any citizen, but to demonstrate who our laws are meant to protect -- the public safety, or the gun lobby's definition of "privacy".

Nine out of ten Americans support a waiting period law. In 1981, the Attorney General's Task Force on Violent Crime called for a national waiting period. This year five major law enforcement organizations and other national groups are lining up behind this support. The Fraternal Order of Police, the International Association of Chiefs of Police, the National Association of Police Organizations, the Police Executive

Research Foundation and the International Brotherhood of Police Officers have all endorsed this legislation. The American Bar Association, the American Jewish Congress, the National Conference of Mayors, the American Academy of Pediatrics and many other prominent organizations have expressed their support for a national waiting period law. Already, 86 of my colleagues in the House have cosponsored H.R. 975.

A few years ago we could have added the National Rifle Association to this list of endorsers. In a past policy statement the NRA expressed its support for a national waiting period law. Now that it has changed its position, the NRA claims that S. 466 and H.R. 975 would begin "de facto registration" of guns, "invite arbitrary denials of gun rights" and "discourage law-abiding citizens from obtaining firearms." In fact, the bills would do none of these things. S. 466 would require that purchaser statements received by police be destroyed within 60 days. It would prevent handgun sales only when such a sale would violate federal, state or local laws. And it would only discourage those from purchasing a handgun who have a record of criminal activity, mental incompetency or drug abuse to hide.

Opponents of even the most moderate gun control legislation often try to hinge their arguments on the constitution; but those against a waiting period are not defending a constitutional right, they are trying to rewrite the constitution. They demand the right to keep and bear arms immediately, no chance to enforce current law and no consideration of the public safety issues involved.

As responsible legislators we cannot afford to base our public policy on the misleading rhetoric offered by the gun lobby, especially when the majority of Americans have consistently supported tougher firearm control laws. A waiting period will not stop every criminal from purchasing a handgun -- but it will stop some, and it will save lives. The public safety and public sentiment demand that we take this reasonable step available to us.

Senator METZENBAUM. Thank you very much, Congressman Feighan. It is always a privilege to work with you and we appreciate very much your forthright statement and we will be moving.

Mr. FEIGHAN. Thank you.

Senator METZENBAUM. Our next panel consists of Sarah Brady, Tom Falzone, of Cleveland, and Ross Misher, of Boca Raton, FL.

The committee has a 4-minute rule, with a 1-minute allowance. Ms. Brady, we will give you a little extra if you need it, because we think your circumstances are somewhat different.

We would ask Tom Falzone to come to the table, if he is here. I know that Ross Misher is here. We are happy to have you with us. It is nice to see you again this morning.

A PANEL CONSISTING OF SARAH BRADY, WASHINGTON, DC; THOMAS FALZONE, CLEVELAND, OH; AND ROSS MISHER, BOCA RATON, FL

Ms. BRADY. It is nice to see you and I thank you for the opportunity of appearing today.

As you know, my name is Sarah Brady. I am vice chair of Handgun Control, Inc., a national citizens organization working to keep handguns out of the wrong hands. I am here today in support of S. 466, legislation to establish a seven-day waiting period and allow for a background check for handgun purchases.

I live in Northern Virginia with my husband, Jim, and our 8-year-old son, Scott. Jim and I met through politics and our lives—very much like yours—have been on a campaign-to-campaign basis—hectic and filled with many ups and downs. We, in fact, both worked here on Capitol Hill for a while, Jim here in the Senate and me in the House.

Let me ask you to think back to the day when you won your first election—the exhilaration—the culmination of your many days of hard work and handshaking. January 2, 1981, was a day like that for Jim Brady. After many years of toiling in the vineyards, he was called by President-elect Reagan, asking him to serve as Press Secretary. This was a dream come true for Jim, the top job in his profession. Jim was on a high like you have never seen.

On the morning of March 30, 1981, as Jim was leaving for the White House at about 5:30 in the morning, he decided to go upstairs and get Scott, then 2, from his crib for a romp. It was almost a portent. He saw so little of Scott in those days. It was to be the last time Jim would climb those stairs or see Scott's bedroom, for at 2:30 p.m. on that day our lives would change forever. On that day, my husband was shot through the head by a deranged young man. He nearly died. The President nearly died, and two of his security men were seriously wounded.

It has now been more than 6 years, and Jim gets better every day, but it has been a long, and slow painful recovery for him. Jim's strong character, his determination and the support of a great many loving, caring people are pulling him through.

Still, there have been many times over these years that I have found myself thinking, "Why is it possible for the John Hinckleys of this world to walk into a store, buy a handgun and go out and shoot people because they hear voices or have strange visions?"

Politically, I am a Republican and a conservative. Many people who share my political outlook say that the way to keep handguns out of the wrong hands is to add mandatory long sentences for those who are convicted of crimes involving handguns. I agree, that helps and I am for mandatory sentencing, but it addresses only part of the problem. And in any case, locking up John Hinckley did not take back the bullet that nearly killed Jim Brady, nor has it spared him years of pain.

Now, I know in a few minutes you are going to hear from the NRA about how John Hinckley bought his gun, but I want you to know the facts. John Hinckley walked into a Dallas pawn shop and in minutes purchased the handgun he later used to shoot Jim. He committed a felony when he used a false address on the Federal form he was required to complete, but this went unnoticed because there was no requirement under Texas law that Hinckley's statements be verified. A simple check may have stopped him—if the local police had been given an opportunity to discover his lies, John Hinckley might well have been in jail instead of on his way to Washington.

I firmly believe that if a reasonable waiting period and a provision for background checks had been in effect when John Hinckley walked into that Dallas pawn shop, my husband Jim would be spending his days pursuing a successful career and, in his spare time, climbing trees with our 8-year-old, rather than in hours of painful and rigorous physical therapy.

Public support for a waiting period and background check is strong. A 1981 Gallup Poll found that 91 percent of Americans want such a law. The 1981 Reagan Administration Task Force on Violent Crime recommended such a law. A 1985 Justice Department report stated that "at minimum, the acquisition of a firearm by a felon should be somewhat more complicated than just walking into a gun shop and buying one."

Last year, with the passage of the McClure-Volkmer bill, we achieved some major victories. We held the line on the 1968 Gun Control Act. We succeeded in stopping the importation of deadly Saturday night special parts, the kind of handgun John Hinckley used. And Congress banned the sale of new machine guns, the automatic weapons of war which had been legal in 37 States.

Last year, Congress also voted to outlaw armor-piercing bullets, legislation opposed by the National Rifle Association. This year, the NRA has stated that its highest priority is to repeal the machine gun ban. The NRA is also opposing legislation which would ban plastic firearms which cannot be detected by x-ray and metal detection equipment. And now the NRA is opposing a 7-day waiting period on handgun purchases.

After looking at the NRA positions on machine guns, cop-killer bullets, and plastic guns, I find it difficult to believe that any Member of Congress could trust the judgment of the NRA on a national waiting period or any other legislation affecting American lives and public safety.

While the NRA opposes S. 466, it is interesting to note that several years ago in its own publication, the NRA stated that a waiting period would be effective as a means of "reducing crimes of

passion and in preventing people with criminal records or dangerous mental illness from acquiring guns."

The NRA claims that waiting periods do not stop crime because criminals do not submit to waiting periods. However, in areas where waiting periods and background checks are required, prohibited persons have been stopped from obtaining handguns.

In California, in 1 year alone, 1,200 prohibited handgun buyers were screened out through the State's waiting period. The Chief of Police in Columbus, GA, says that the city's 3-day waiting period catches two felons a week trying to buy handguns. And in Memphis, TN, a police sergeant reports that the State's 15-day waiting period screens out about 50 applicants a month, most of whom have criminal records.

The NRA argues that waiting periods do not prevent criminals from obtaining handguns because criminals get handguns from other sources. But a study by the Bureau of Alcohol, Tobacco and Firearms, "Project Identification," found that "the percentage of out-of-State handgun purchases is directly proportional to the strength of the local firearms regulations." For example, the study found that of handguns used in crime in New York, only 4 percent were purchased in the State. With only a few exceptions, the rest were purchased in States without waiting periods or background checks.

The study also showed that in States without waiting periods or background checks, an overwhelming majority of the handguns used in crime were purchased in the same State. For example, of the handguns used in crime in Dallas, 87 percent were purchased in Texas.

While 18 States and many localities have already passed waiting period laws, a national waiting period law is desperately needed.

I am one wife and mother who hopes the day will come when no American family has to go through what we have been through and who asks that you provide the leadership that will finally begin to make it possible for use to keep these terrible weapons out of the wrong hands. I urge you to report this bill favorably out of the committee.

Thank you.

Senator METZENBAUM. Thank you very much for your very comprehensive statement. I think the American people owe you a great debt of gratitude, not alone for what you have endured, for the challenges that a husband who has been injured has placed upon you, but also because you have seen fit to provide the leadership in connection with the handgun control issue, and this one-week waiting period bill particularly. I know I for one am very grateful to you and find it a privilege, consider it a privilege to be working with you in connection with this endeavor. I hope we will succeed.

Ms. BRADY. Thank you very much. I am looking forward to it, too.

Senator METZENBAUM. Mr. Falzone, we would be happy to hear from you. We have a 4-minute rule. You are from Cleveland, OH, and I am happy to welcome a fellow Clevelander. Please proceed.

Mr. FALZONE. Thank you, Senator.

I am here because of what happened to my dear friend, Kathy Bowman. I am here to urge support for S. 466. Kathy was a Cleve-

land Public Library employee brutally murdered at work 12 days before her 21st birthday. The murder happened at one of our country's most celebrated libraries in broad daylight, before many people.

Two other women were seriously injured in the assault. All three were shot by a felon with a long violent criminal history. The shootings transformed a symbol of learning and civilization into a war zone, shocking a whole community. Kathy's death was not like a TV fiction murder, where people drop quietly to the ground.

At the trial we discovered that she did suffer and was aware of what happened. After she was shot, she screamed out in agony, crying, "Help me, somebody, please, I'm dying." She was conscious and in pain for what we understand was about a minute. This was no way for such a giving and caring person to die. This wasn't a gun duel. No, she was first shot in the back, then three times in the chest by someone she had never seen before; she, who never hurt a soul and always cared about people.

Kathy was a special lady with a zest for life. She was a Sunday school teacher at Calvary Lutheran Church in Cleveland. She loved to teach children and planned to go into the field of social work or the ministry. She was to start classes at Cleveland State University on January 2, which was her birthday.

Because we make it so easy for violent felons and the mentally ill to get handguns, she is dead. The drifter who committed that act does not see things the way we do. He walked by two policemen and two security guards who were working in front of the library before he went on this rampage. So it must be understood that he had a history of violence, of setting fire to a building, of stabbing another prisoner with a pencil, but nobody died in those attacks. It was not until he got the gun the same day that made this hopeless drifter a dangerous and powerful threat.

Had a waiting period law for cooling off or background checks been in effect, I have no doubt that Kathy and countless other victims would still be alive today. This waiting period would still preserve the rights of those law-abiding citizens who wish to own guns. There is no effort here to take away guns from citizens.

I am sure that all of you can imagine and may have even felt the horror, pain and sense of loss experienced by those of us who have lost a loved one to a shooting death. Kathy's life touched many people, her family, friends and acquaintances, all of us affected painfully by her death and by the way she died. Multiply those numbers by 20,000 a year.

For the past 2 years, those of us who knew and loved Kathy have been filled with questions. We wonder, what if Kathy had been at lunch or what if she had been in another part of the building? But what if the drifter had to wait to get his handgun?

It is not possible to answer the first two questions, but to the third question, I say Kathy would be alive today had the drifter not gotten that gun that day. These murders do not just affect the victims, but they affect the whole community. They shock our community. I hope it will shock this Nation into some action.

Thank you.

Senator METZENBAUM. Thank you very much, Mr. Falzone. I know it is very difficult for you to come before us today to testify about your friend, but we do appreciate it.

Just so we are absolutely clear on the facts, as I understand it, the man who shot Kathy had bought the gun just a couple of hours before he went on his rampage, is that correct?

Mr. FALZONE. Yes, sir. Two nights before he was in a rooming house and ripped off of some personal belongings. It set him off in a rage, and I guess he decided that he was going to get his revenge on humanity. He already had an anger toward women and people in general, but it was this thing that set him off in anger, and I believe if he had to wait a few days he probably would have cooled off and forgotten about the whole thing.

Senator METZENBAUM. He would not have been able to buy a gun if this law were in effect because he had had several previous convictions, did he not?

Mr. FALZONE. Yes.

Senator METZENBAUM. Thank you very much, Mr. Falzone.

Mr. FALZONE. I also believe that just a cooling off period would have been a real deterrent. Maybe if he had gotten another type of weapon, she still would have survived because she would have been able to fight off a knife attack.

Senator METZENBAUM. I must say frankly that I sit here and I say to myself what kind of people are they in the NRA that are so opposed to this very reasonable limitation with no denial of the right to own a gun. Is it possible to come here and give us arguments and statistics?

The fact is that no harm could come to any person by reason of the enactment of this bill. The NRA was for it previously in their own written literature, then reversing itself now, it is almost as if it is an organization that needs an issue in order to exist and I think that, no matter what you say about guns, it is their issue. I would only urge upon them that they have some logic and reason, because I think when you hear a story such as Mrs. Brady's or Tom Falzone's, you have to say how can they oppose it.

I could understand people differing on legislative proposals around here, when labor is against industry, when environmentalists are against certain other issues having to do with the way business operates, when some argue for Contra aid and some argue against it. I understand that kind of conflict, but I do not understand the NRA opposition to this proposal.

Mr. Misher, we are very happy to hear from you. Tell us about yourself.

STATEMENT OF ROSS MISHER

Mr. MISHER. My name is Ross Misher. I am 16 years old and I am from Boca Raton, FL. I am here today to urge you to support S. 466.

I am the living victim, but unfortunately my father is the dead one. He probably would be alive today if Florida had a cooling-off period.

On January 11, 1984, one of my father's employees went out on his lunch hour and purchased a handgun with the same ease as

buying a cup of coffee. He returned from lunch and after work killed my father and then killed himself. We do not know why. We never will. All I do know is for the rest of my life a part of me will always be lying there, dead on the floor. "What an awful story," people say, "How did you live through it." And I sit there and I think about the other 59 families that went through the same exact thing that I did on January 11, 1984—60 a day, every day.

I bet if you asked a member of the NRA if his father was shot and killed with a handgun, I think the answer would be no. No one could support the NRA if they lived through a tragedy like this.

If a person cannot wait a short period of time to receive a gun, I do not think he needs it for the right reasons. I am not speaking for myself today; I am speaking for my best friend, my dad. The following is a poem I wrote in reaction to attempts in the State legislature to wipe out the cooling-off period that was passed after my father was shot:

A man goes out, and buys a gun.
Not to realize, what he's done.

A little off, something scarred.
They ring it up, on VISA card.

Five minutes after, he walked in the store.
Purchased the gun, and walked out the door.

There was a cry, and then no more.
Blood stains mounted, on a cold white floor.

My dad lay silent, his body still.
And one by one, they read his will.

Time to cool down? No, he just fired.
The cooling-off period was not required.

With each new day, comes something sad.
Another victim, just like my dad.

I wonder how you could be willing,
To promote death and violent killing.

To pass strict laws, determining fate.
To add more deaths, upon our State.

Please listen to our cause, and open your ears.
To the broken families, drowned in tears.

Reconsider your views, and think about . . .
The blood stains on the floor, that still won't come out.

Thank you.

Senator METZENBAUM. Thank you very much. I must say that since I have been in the U.S. Senate, I do not know of any more powerful statements that have been made by three individuals than the three of you, powerful, realistic, down-to-earth, crying out for an answer, crying out for help. I hope we do not let you down.

Thank you very much.

Our third panel is Sgt. R.G. Pepersack, Commander, firearms licensing section, Maryland State Police, Pikesville, MD; and Ron Johnson, Member, Florida House of Representatives, Tallahassee, FL.

I think you know our 4-minute rule, with 1-minute leeway.

Sergeant Pepersack?

A PANEL CONSISTING OF SGT. R.G. PEPERSACK, COMMANDER, FIREARMS LICENSING SECTION, MARYLAND STATE POLICE, PIKESVILLE, MD; AND HON. RON JOHNSON, MEMBER, FLORIDA HOUSE OF REPRESENTATIVES, TALLAHASSEE, FL

Sergeant PEPERSACK. Good morning, sir.

Mr. Chairman, I am pleased and honored to be here this morning, to come before this committee and speak on the proposed legislation, the Handgun Violence Prevention Act, S. 466, in support of that legislation.

As the commander of the firearms license section of the Maryland State Police, I am the responsible agent for the superintendent of the Maryland State police as to the administration of all pistol and revolver dealer licensing and the approval of all persons purchasing handguns through those licensed dealers, and this is under article 27, section 141–448 of the Annotated Code of Maryland. This is known as the Maryland pistol law. This law has been in place and functioning very successfully since 1966.

The Maryland law requires that all persons intending to purchase a pistol or revolver through a licensed Maryland dealer, that a background check must be completed and the applicant undergo that check and wait 7 days prior to the actual delivery of a handgun. All purchase applications are forwarded by the dealer to the firearms license section, and during the 7-day waiting period a check is made of the purchaser's background in an effort to insure that he or she would not be prohibited from purchasing the firearm either by Maryland law or by Federal statute.

Annual statistics indicate that approximately 4 percent of all purchase applications for handguns are initially disapproved due to the determination of an indicated prohibitive record. At the request of the applicant, an informal hearing is conducted where the difficulty developed in the background check can be discussed. Approximately 40 percent of these people disapproved request and attend the hearing. As a result of those hearings, approximately 80 to 85 percent are finally approved to purchase a handgun. In 1986, the Maryland State police, through dealers only, processed 20,704 applications. We disapproved 1,102 initially, we held 471 hearings, and approximately 370 of the applicants that were initially disapproved were finally approved.

The Maryland Legislature provided this 7-day waiting period for several reasons: First, to act as a deterrent of the purchase of a handgun during a period of anger or depression when the weapon could be used against one's self or others in the heat of passion. Second, as previously related, to provide the time necessary to enable the Maryland State Police to perform the background check of the individual purchasing the weapon.

The firearms laws of Maryland do not regulate the sale of rifles or shotguns, and does not require the reporting of private sales of handguns between residents of our State, but this law does work effectively in preventing those persons who should not purchase or own handguns from acquiring those weapons through licensed dealers.

Contrary to the assertions of some, convicted criminals do attempt to purchase a handgun through legitimate channels of com-

merce. Approximately 10 percent of all persons who attempt to purchase a handgun that are initially disapproved remain disapproved, even after a hearing, due to the determination of the commission of a prohibitive act under title 18 of the Federal Code or under State law. Approximately another 3 to 5 percent of the total number of persons disapproved have been convicted of a crime of violence as defined by the Maryland pistol law. These crimes include abduction, arson, all types of burglary, all types of breaking and entering, kidnapping, manslaughter, except for involuntary manslaughter, mayhem, murder, rape, all forms of robbery, statutory sexual offense in the first degree, and sodomy, or any attempt to commit those crimes or assault with intent to commit any offense punishable by more than 1 year. That is how the statute reads. They are Maryland violent crimes. That is a lot more restrictive than the Federal violent crimes.

At this time, I have 14 active cases where the person who has made application to purchase a handgun and has been determined to have been convicted of a State violent crime. These individuals will be formally charged with making a false application and perjury under Maryland law. These cases have been successfully prosecuted numerous times in the past, with the attempt to send a clear message to those who would attempt to violate Maryland law.

I must be realistic in stating that Maryland law or any law or set of laws, for that matter, cannot prevent a determined person from acquiring a handgun to use in a criminal act. But we as legislators and regulators can only do the best job possible in formulating and enforcing the laws that hinder criminals from acquisition of firearms while not denying the honest citizens of our Nation legal firearms ownership and use. I, as a representative of the Superintendent of the Maryland State Police, in administering the Maryland pistol law, support your efforts in accomplishing this end with the enactment of the Handgun Violence Prevention Act.

Thank you, Senator.

[Submissions of Sergeant Pepersack follow:]

STATE OF MARYLAND
MARYLAND STATE POLICE

Opening comments before the Senate Committee on the Judiciary, Subcommittee on the Constitution on S.466, Handgun Violence Prevention Act, Washington, D.C., June 16, 1987 by Sgt. R.G. Pepersack, Sr., Maryland State Police, Commander, Firearms License Section, Pikesville, Maryland 21208.

Good morning/afternoon Mr. Chairman, Senators and Committee Members. I am pleased and honored to be asked to testify before this Committee on the proposed Handgun Violence Prevention Act (S.466), in support of this legislation.

As the Commander of the Firearms License Section of the Maryland State Police, I am the responsible Agent for the Superintendent of the Maryland State Police as to the administration of all pistol and revolver dealer licensing and the approval of all persons purchasing handguns through those licensed dealers in our State under Article 27, Section 441-448 of the Annotated Code of Maryland. This law has been in place and functioning very successfully in our State since 1966.

Maryland Law requires that all persons intending to purchase a pistol or revolver through a licensed Maryland dealer to complete a purchase application and undergo a background check, and wait a required seven (7) days prior to the actual delivery of any handgun. All purchase applications are forwarded by the dealer to the Firearms License Section, and during the seven (7) day waiting period a check is made of the purchaser's background in an effort to insure that he or she would not be prohibited from purchase or ownership of a firearm by either the laws of the State of Maryland or any Federal Statute.

Annual Statistics indicate that approximately 4% of all purchase applications for handguns are initially disapproved due to the determination of an indicated prohibitive record. At the request of the applicant an informal hearing is conducted where the difficulty developed in the background check is discussed. Approximately 40% of these people disapproved request and attend this hearing. As a result of those hearings, approximately 80-85% are finally approved to purchase a handgun. In 1986 20,704 applications to purchase a handgun were approved, with 1102 applications initially disapproved. A total of 471 hearings were conducted which resulted in approximately 370 applicants being finally approved.

The Maryland Legislature provided this seven (7) day waiting period for several reasons. First, to act as a deterrent of the purchase of a handgun during a period of anger or depression when the weapon could be used against one's self or others in the "heat of passion". Second, as previously related, to provide

the time necessary to enable the Maryland State Police to perform a background check of the individual purchaser.

The firearms laws of Maryland do not regulate the sale of rifles or shotguns, and does not require the reporting of private sales of handguns between residents of our State, but this law does work effectively in preventing those persons who should not purchase or own handguns from acquiring those weapons through licensed dealers. Contrary to the assertions of some, convicted criminals do attempt to purchase a handgun through legitimate channels of commerce. Approximately 10% of all persons who attempt to purchase a handgun that are initially disapproved remain disapproved, even after a hearing, due to the determination of the commission of a prohibitive act under Title 18 of the United States Code. Approximately another 3-5% of the total number of persons disapproved have been convicted of a "Crime of Violence" as defined by the Maryland Pistol Law. These crimes include abduction, arson, all types of burglary, all types of breaking and entering, kidnapping, manslaughter except for involuntary manslaughter, mayhem, murder, rape, all forms of robbery, statutory sexual offense in the first degree, and sodomy, or any attempt to commit any of those crimes, or assault with intent to commit any offense punishable by more than one year in prison. At this time I have fourteen (14) active cases where the person has made application to purchase a handgun and has been determined to have been convicted of a state crime of violence. These individuals will be formally charged with making a false application and perjury under Maryland Law. These cases have been successfully prosecuted numerous times in the past, with the attempt to send a clear message to those who would attempt to violate Maryland Law.

I must be realistic in stating the Maryland Law, or any law or set of laws, can not prevent a person from acquiring a handgun to use in a criminal act. But, we as legislators and regulators can only do the best job possible in formulating and enforcing laws that hinder the criminal from acquisition of firearms while not denying that honest citizens of our nations legal firearms ownership and use. I, as a representative of the Superintendent of the Maryland State Police in administering the Maryland Pistol Law, support your efforts in accomplishing this end with the enactment of the Handgun Violence Prevention Act.

Thank you Senators, for this opportunity to speak on this issue.

MARYLAND STATE POLICE

REG. TYPE N ☐ V ☐ APPLICATION TO PURCHASE A PISTOL OR REVOLVER

Section 1-A APPLICANT INFORMATION **Section 1-A**

Driver License I.D. # _____ Soc.Sec # ___ – ___ – ____

Full Name Last _____ First _____ Middle _____ SFX ____

Street Address _____ Check if Baltimore City resident ____

County (if not city resident) _____ CITY/MUN CODE State _____ Zip _____

Date of Birth ___ / ___ / ___ Race _____ Sex _____

Phone Home _____ Work _____

Section 1-B THIS AREA FOR M.S.P. USE ONLY **Section 1-B**

Current disposition of applicant _____ Current disposition date ___ / ___ / ___

Comments: _____

Signature of approving official: _____

Section 2-A DEALER INFORMATION **Section 2-A**

Dealer I.D. # _____ Dealer Name _____

Dealer Address _____ Zip _____ Phone _____

Salesperson Name Last _____ First _____ Middle _____ SFX ____

Section 2-B THIS AREA FOR M.S.P. USE ONLY **Section 2-B**

Date form received (initial)	Date form received (final)

Section 3-A THIS AREA FOR M.S.P. USE ONLY **Section 3-A**

GUN STATUS _____

COMMENTS

Section 3-B GUN INFORMATION **Section 3-B**

Make _____ MAKE CODE Caliber _____ Serial # _____

Model _____ Type _____ Barrel length _____

Finish _____ Country of Origin _____

**MARYLAND LAW: PLEASE READ THE FOLLOWING BEFORE SIGNING THIS FORM.

NO PERSON MAY PURCHASE A PISTOL OR REVOLVER IF HE OR SHE PURSUANT TO ARTICLE 27, SECTION 441-448 INCLUSIVE

1. HAS BEEN CONVICTED OF A CRIME OF VIOLENCE IN THIS STATE OR ELSEWHERE OR OF ANY OF THE PROVISIONS OF THIS STATUTE. 2. IS A FUGITIVE FROM JUSTICE. 3. IS UNDER TWENTY ONE YEARS OF AGE. 4. IS AN HABITUAL DRUNKARD. 5. IS ADDICTED TO OR AN HABITUAL USER OF NARCOTICS, BARBITURATES OR AMPHETAMINES. 6. HAS SPENT MORE THAN THIRTY CONSECUTIVE DAYS IN ANY MEDICAL INSTITUTION FOR TREATMENT OF MENTAL DISORDER OR DISORDERS, UNLESS THERE IS ATTACHED TO THE APPLICATION A PHYSICIAN'S CERTIFICATE, ISSUED WITHIN THIRTY DAYS PRIOR TO THE APPLICATION CERTIFYING THAT THE APPLICANT IS CAPABLE OF POSSESSING A PISTOL OR REVOLVER WITHOUT UNDUE DANGER TO HIMSELF OR HERSELF, OR TO OTHERS.

I CERTIFY THAT I HAVE READ OR HAVE HAD READ TO ME THE ABOVE QUALIFICATIONS AND RESTRICTIONS AND UNDERSTAND THEM. I AM NOT PROHIBITED BY LAW FROM PURCHASING OR POSSESSING A PISTOL OR REVOLVER. I DO HEREBY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY, THAT THE CONTENTS OF THE AFOREGOING APPLICATION TO PURCHASE A PISTOL OR REVOLVER ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Section 4 - Complete upon Application	Section 5 - Complete upon Transfer
Applicant Signature _____	Purchaser Signature _____
Witness _____ Date _____	Witness _____ Date _____

MSP Form #77R (1-85)

ARTICLE 27, SECTIONS 441 TO 448 - MARYLAND PISTOL LAW

Article 27, 441 Definitions.

(a) As used in this subtitle -

(b) The term "person" includes an individual, partnership, association or corporation.

(c) The term "pistol or revolver" means any firearm with barrel less than twelve inches in length, including signal, starter, and blank pistols.

(d) The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail, or any person engaged in the business of repairing such firearms.

(e) The term "crime of violence" means abduction; arson; burglary, including common-law and all statutory and storehouse forms of burglary offenses; escape; housebreaking; kidnapping; manslaughter, excepting involuntary manslaughter; mayhem; murder; rape; robbery; robbery with a deadly weapon; sexual offense in the first degree; and sodomy; or an attempt to commit any of the aforesaid offenses; or assault with intent to commit any other offense punishable by imprisonment for more than one year.

(f) The term "fugitive from justice" means any person who has fled from a sheriff or other peace officer within this State, or who has fled from any state, territory or the District of Columbia, or possession of the United States, to avoid prosecution for a crime of voilence or to avoid giving testimony in any criminal proceeding.

(g) The term "antique pistol or revolver" means:

(1) Any pistol or revolver (including any pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(2) Any replica of any pistol or revolver described in paragraph (1) if the replica:

(i) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(ii) Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

442. Sale or transfer of pistols and revolvers.

(a) Right to regulate sales preempted by State. - All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on sales of pistols or revolvers are superseded by this section, and the State of Maryland hereby preempts the rights of such jurisdictions to regulate the sale of pistols and revolvers.

(b) Application to purchase or transfer. - No dealer shall sell or transfer any pistol or revolver until after seven days shall have elapsed from the time an application to purchase or transfer shall have been executed by the prospective purchaser or transferee, in triplicate, and forwarded by the prospective seller or transferor to the Superintendent of the Maryland State Police.

(c) Same - Disposition of copies. - The dealer shall promptly after receiving an application to purchase or transfer, completed in accordance with subsection (e) below, forward one copy of the same, by certified mail, to the Superintendent of the Maryland State Police. The copy forwarded to the said Superintendent shall contain the name, address, and signature of the prospective seller or transferor. The prospective seller or transferor shall retain one copy of the application for a period of not less than three years. The prospective purchaser or transferee shall be entitled to the remaining copy of the application.

(d) Same - Statement of penalties for supplying false information required. -The application to purchase or transfer shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than two years, or a fine of not more than $1,000, or both."

(e) Same - Information required. -The application to purchase or transfer shall contain the following information:

(1) Applicant's name, address, occupation, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

(2) A statement by the applicant that he or she:

(i) Has never been convicted of a crime of violence, in this state or elsewhere, or of any of the provisions of this subtitle.

(ii) Is not a fugitive from justice.

(iii) Is not an habitual drunkard.

(iv) Is not an addict or an habitual user of narcotics, barbiturates or amphetamines.

(v) Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the date of the application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(vi) Is at least 21 years of age as required by federal law.

(vii) Has or has not submitted a prior application and, if so, when and where.

(3) The date and hour the application was delivered in completed form to the prospective seller or transferor by the prospective purchaser or transferee.

(f) Investigation of application; procedure when false information is discovered or application is incomplete. - The Superintendent of the Maryland State Police may request the assistance of the police commissioner of Baltimore City, the chief of police in any county maintaining a police force, or the sheriff in a county not maintaining a police force and shall promptly upon receipt of an application to purchase or transfer conduct an investigation in order to determine the truth or falsity of the information supplied and statements made in said application. If it be thereupon determined that any false information or statement has been supplied or made by the applicant, or that the application has not been properly completed, the said Superintendent or any specific member of the State Police authorized by the Superintendent to act as his agent in matters relating to pistol or revolver sales shall notify the prospective seller or transferor, in writing, within seven days from the date the executed application to purchase or transfer was forwarded by certified mail, of his disapproval of said application. Written notification of such disapproval shall be thereafter forwarded by the said Superintendent and/or his duly authorized agent or agents to the prospective purchaser or transferee. The date upon which the executed application to purchase or transfer was forwarded by certified mail by the prospective seller or transferor shall be considered as the first day of the seven-day period allowed for notice of disapproval to the said prospective seller or transferor. If the seventh day of the seven-day period allowed for the said notice of disapproval shall fall on a Sunday or legal holiday, the computation period shall be extended to the first day next following, which is neither a Sunday nor a legal holiday.

(g) Sale prohibited to disapproved applicant; exceptions. - No dealer shall sell or transfer a pistol or revolver to an applicant whose application has been timely disapproved, unless such disapproval

has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (h) below.

(h) Hearing; judicial review. - Any prospective purchaser or transferee aggrieved by the action of the State Police may request a hearing within 30 days from the date when written notice was forwarded to such aggrieved person by writing to the Superintendent of State Police, who shall grant the hearing within fifteen days of said request. Said hearing and subsequent proceedings of judicial review, if any, thereupon following shall be conducted in accordance with the provisions of the Administrative Procedure Act.

(i) Notification of completed transaction; permanent record of sales and transfers. - Any dealer who sells or transfers a pistol or revolver in compliance with this subtitle shall forward a copy of the written notification of such completed sales and transfers of pistols and revolvers in the State. The notifications shall contain an identifying description of the pistol or revolver sold or transferred including its caliber, make, model, manufacturer's serial number, if any, and any other special or peculiar characteristics or marking by which the said pistol or revolver may be identified.

(j) Construction of section. - Nothing in this section shall be construed to affect sales and/or transfers for bona fide resale in the ordinary course of business of a person duly licensed under § 443 of this subtitle, or sales, transfer, and/or the use of pistols or revolvers by any person authorized or required to sell, transfer, and/or use such pistols or revolvers as part of his or her duties as a member of any official police force or other law enforcement agency, the armed forces of the United States, including all official reserve organizations, or the Maryland National Guard.

(k) Penalties. - Any person who knowingly gives any false information or makes any material misstatement in an application required by this section, or who fails to promptly forward such application to the Superintendent of the Maryland State Police or his duly authorized agent or agents, or who sells or transfers a pistol or revolver to a person other than the one by whom application was made, or who otherwise sells, transfers, purchases, or receives transfer of a pistol or revolver in violation of this section, shall upon conviction thereof be subject to the penalties hereinafter provided in §448 of this subtitle.

443. Pistol and revolver dealer's license.

(a) Required. - No person shall engage in the business of selling pistols or revolvers unless he lawfully possesses and conspicously displays at his place of business, in addition to any other license required by law, a pistol and revolver dealer's license issued by the Superintendent of the Maryland State Police or his duly authorized agent or agents. Such license shall identify the licensee and the location of his place of business. One such license shall be required for each place of business where pistols or revolvers are sold.

(b) Expiration date; fees; change of place of business; charge for costs paid by State police in securing records from other sources. - The license required by subsection (a) above shall expire on the 30th day of June of each year. The initial fee for the license shall be $50, and the annual renewal shall be $25, payable to the Comptroller of the State of Maryland. The license shall not be transferable nor shall any refund or proration of the annual fee therefor be allowed. Provided, however, that before any licensee changes his place of business he shall so inform the Superintendent of the Maryland State Police or his duly authorized agent or agents and surrender his license, whereupon the Superintendent or his duly authorized agent or agents shall, if no cause exists for the revocation of the license, issue a new license, without fee, covering the new place of business for the duration of the unexpired term of the surrendered license. Notwithstanding the above fees, costs paid by the Maryland State Police in

securing records from any other source shall be charged to the applicant; however, the charges assessed against the applicant may not exceed $12.

(c) Application for license - Statement of penalties for giving false information required. - Every annual application for a pistol and revolver dealer's license shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than two years, or a fine of not more than $1,000, or both."

(d) Same - Information required. - The application for a pistol and revolver dealer's license shall contain the following information:

(1) Applicant's name, address, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

(2) A clear and recognizable photograph of the applicant, except where such photograph has been submitted with a prior year's application.

(3) A set of the applicant's fingerprints, except where such fingerprints have been submitted with a prior year's application.

(4) A statement by the applicant that he or she:

(i) Is a citizen of the United States.

(ii) Is at least 21 years of age as required by federal law.

(iii) Has never been convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle.

(iv) Is not a fugitive from justice.

(v) Is not an habitual drunkard.

(vi) Is not an addict or an habitual user of narcotics, barbiturates or amphetamines.

(vii) Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(e) Same - Investigation; procedure when false information discovered or application incomplete. - The Superintendent of the Maryland State Police and/or his duly authorized agent or agents shall conduct an investigation in order to determine the truth or falsity of the information supplied and statements made in an application for a pistol and revolver dealer's license. If it be thereupon determined that any false information or statement has been supplied or made by the applicant, or that the application has not been properly completed, the said Superintendent and/or his duly authorized agent or agents shall forward written notification to the prospective licensee of his or their disapproval of said application.

(f) Sales by disapproved applicants prohibited; exceptions. - No person shall engage in the business of selling pistols or revolvers whose application for a pistol and revolver dealer's license has been disapproved, unless such disapproval has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (g) below.

(g) Appeal from disapproval of application. - Any person aggrieved by the action of the Superintendent of the Maryland State Police and/or his duly authorized agent or agents may appeal the disapproval of his or her application for a pistol and revolver dealer's license to the circuit court of the county where the applicant's intended place of business is to be conducted. Such appeal must be filed not later than thirty days from the date written notification of disapproval to the prospective licensee was mailed by the said Superintendent and/or his duly authorized agent or agents. The court wherein an appeal is properly and timely filed shall affirm or reverse the determination of disapproval rendered by the said Superintendent and/or his duly authorized agent

of agents, depending upon whether it finds that any false information or statement was supplied or made by the applicant, or that the application was not properly completed. A further appeal to the Court of Special Appeals may be prosecuted by either the Superintendent of the Maryland State Police or the applicant from the decision reached by the circuit court in accordance with this subsection.

(h) Revocation of license. - The Superintendent of the Maryland State Police and/or his duly authorized agent or agents shall revoke an issued pistol and revolver dealer's license, by written notification forwarded to the licensee, under any of the following circumstances:

(1) When it is discovered false information or statements have been supplied or made in an application required by this section.

(2) If the licensee is convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle, or is a fugitive from justice, or is an habitual drunkard, or is addicted to or an habitual user of narcotics, barbiturates or amphetamines, or has spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless the licensee produces a physician's certificate, issued subsequent to the last period of institutionalization, certifying that the licensee is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(i) Sales by person whose license has been revoked prohibited; exceptions. - No person shall engage in the business of selling pistols or revolvers whose pistol and revolver dealer's license has been revoked, unless such revocation has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (j) below.

(j) Hearing on revocation of license; judicial review. - Any prospective dealer aggrieved by the action of the State Police may request a hearing within thirty (30) days from the date when written notice was forwarded to such aggrieved person by writing to the Superintendent of State Police, who shall grant the hearing within fifteen days of said request. Said hearing and subsequent proceedings of judicial review, if any, therupon following shall be conducted in accordance with the provisions of the Administrative Procedure Act.

(k) Penalties. - Any person who engaged in the business of selling pistols or revolvers in violation of this section or who knowingly gives any false information or makes any material misstatement in an application required by this section shall upon conviction thereof be subject to the penalties hereinafter provided in § 448 of this subtitle. Each day on which pistols or revolvers are unlawfully sold or offered for sale shall be considered a separate offense.

444. Obliterating, etc., identification mark or number.

It shall be unlawful for anyone to obliterate, remove, change or alter the manufacturer's identification mark or number on any firearms. Whenever on trial for a violation of this section the defendant is shown to have or have had possession of any such firearms, such fact shall be presumptive evidence that the defendant obliterated, removed, changed or altered the manufacturer's identification mark or number.

445. Restrictions on sale, transfer and possession of pistols and revolvers.

(a) Right to regulate transfer and possession of pistols and revolvers preempted by State. - All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on possession or transfers by private parties of

pistols and revolvers are superseded by this section and the State of Maryland hereby preempts the right of such jurisdictions to regulate the possession and transfer of pistols and revolvers.

(b) Sale or transfer to criminal, fugitive, etc. -A dealer or person may not sell or transfer a pistol or revolver to a person whom he knows or has reasonable cause to believe has been convicted of a crime or violence, or of any of the provisions of this subtitle, or is a fugitive from justice, or is an habitual drunkard, or is addicted to or an habitual user of narcotics, barbiturates or amphetamines, or is of unsound mind, or to any person visibly under the influence of alcohol or drugs, or to any person under 21 years of age as required by federal law.

(c) Possession by criminal, fugitive, etc. - It shall be unlawful for any person who has been convicted of a crime of violence, or of any of the provisions of this subtitle or who is a fugitive from justice or a habitual drunkard, or addicted to or an habitual user of narcotics, barbiturates or amphetamines, to possess a pistol or revolver.

446. Sale, transfer, etc., of stolen pistol.

It shall be unlawful for any person to possess, sell, transfer, or otherwise dispose of any stolen pistol or revolver, knowing or having reasonable cause to believe same to have been stolen.

447. Antique or unserviceable firearms excepted.

The provisions of this subtitle shall not be construed to include any antique or unserviceable firearms sold or transferred and/or held as curios or museum pieces.

447A. Marine signal pistols, etc.

This subtitle does not apply to any signal pistol or other visual distress signal approved by the United States Coast Guard for use as a marine safety device.

448. Penalties.

Any person violating any of the provisions of this subtitle unless otherwise stated herein shall upon conviction be fined not more than one thousand dollars ($1,000) or imprisoned for not more than three years, or both. Any prospective purchaser making a false material statement on an application to purchase or transfer required by §§ 442 or any dealer making a false material statement on an application for a pistol and revolver dealer's license required by § 443 shall upon conviction thereof be fined not more than two (2 years), or both.

Effective - June 1, 1966
Revised - 7/1/85

Senator METZENBAUM. Thank you very much, Sergeant Pepersack.

Sergeant Pepersack, can you give us some examples of some of the violence criminals that come in and try to buy a gun and the way the law has been effective in keening them from being able to buy it?

Sergeant PEPERSACK. Well, I cannot give you names or addresses because——

Senator METZENBAUM. No, I am not asking——

Sergeant PEPERSACK [continuing]. These people who have been charged or are going to be charged with violations of Maryland law—we have an applicant, he is a male, a resident of Baltimore City, he made the application through a licensed dealer in Baltimore City, MD. This person's criminal history begins with an arrest and conviction in Norfolk, VA, at the age of 17 years old, for housebreaking and larceny. That is the first entry on his FBI rap sheet. The record continues for three pages, including five convictions of burglary in Maryland for which he was sentenced to a total of 23 years in prison. I do not know how much he served of that, but that is what the total was.

Charges and arrests for this individual are in the process. Additionally, this person has two other convictions that are federally prohibitive under title 18, not counting the ones that are State prohibitive. They are also federally prohibitive.

The second example would be an applicant, he is again a male and again a resident of Baltimore City. He also made application at a gun shop in Baltimore City. This man was convicted and sentenced to the Maryland House of Corrections for 2 years for assault and robbery, he was placed on parole after serving only 6 months.

Over the next 10 years he was charged with 4 additional incidents of assault and assault with a deadly weapon, finally resulting in sentencing for assault with a deadly weapon for 2 years. During this sentence, he escaped prison and was charged with escape. Upon recapture, a conviction resulted in an additional 6 months to his sentence. Currently, this person is under charges and awaiting trial for perjury and making a false application.

The next individual is a resident of Anne Arundel County, a county just south of Baltimore, MD. He is a male. He purchased a handgun through a licensed dealer in Anne Arundel County. It was determined upon a record check that he had been convicted of two counts of armed robbery and sentenced to 15 years in the Maryland Penitentiary.

Senator METZENBAUM. How come that did not show up before he bought the gun?

Sergeant PEPERSACK. Well, it showed up when he purchased—when a person in Maryland, you wish to buy a handgun in the State of Maryland, you walked in to a licensed dealer, you must fill out a purchase application. That application is forwarded to our office. During the 7-day period we check your background. If we find anything, that application is disapproved. Let us say in your case there is no problem, you have no criminal record or anything, the application is then forwarded back to the gun dealer and the delivery is made.

Senator METZENBAUM. How did this one slip through? How come that one was not picked up in this way?

Sergeant PEPERSACK. Well, it was picked up. When he made the purchase application, it was picked up.

Senator METZENBAUM. He did not get the gun?

Sergeant PEPERSACK. He did not get the gun.

Senator METZENBAUM. Oh, I see.

Sergeant PEPERSACK. None of these people got the gun, not one of them secured a firearm.

A last one, which is real good—and this is really graphic and this shows how police work really goes—this individual came to my attention through a telephone inquiry, a check from investigators of the Baltimore County Police Department. This man to be checked in the firearms files was the subject of an investigation involving the threatening of the life of a Baltimore County police officer. The officer had been threatened by telephone and by letters and tape recordings sent through the mail to him to his duty station.

During the course of their investigation, the Baltimore County investigators had determined that their suspect had made an application to purchase a handgun in a gun shop in an adjacent county, in Harford County. The check of the firearms files of the Maryland State Police was prompted by this information and revealed that the suspect had been disapproved for a handgun purchase in 1980, and the current application was made under a false name.

As no criminal record had been determined under the false name on the application, it had been approved and returned to the dealer. After receiving this information, the agents of the Baltimore County Police Department acted quickly, arresting the suspect as he left the gun shop with a .357 caliber revolver that he had just finished practicing with, no doubt in preparation to use against the Baltimore County police officer whose life he had threatened.

Excellent cooperation between agencies and prompt action resulted in this man's timely arrest, and if it would not have been for that waiting period we would never have caught him. We would never have caught him.

Senator METZENBAUM. And the officer might have lost his life.

Sergeant PEPERSACK. That is correct. There is no doubt. This man is like the man who assaulted Ms. Brady's husband, had mental problems. He was a criminal, he was prosecuted, he pled guilty in the Circuit Court of Baltimore County, and he was convicted under the repeat offender laws of the State of Maryland. He not only was a criminal, but he also had severe mental problems.

Senator METZENBAUM. Thank you very much, Sergeant Pepersack.

We will now hear from Ron Johnson, a member of the Florida House of Representatives. We are very happy to welcome you here this morning, sir.

STATEMENT OF REPRESENTATIVE RON JOHNSON

Mr. JOHNSON. Thank you very much, Senator. I appreciate the hospitality and I am sorry we find ourselves on opposite sides of the issue.

Senator METZENBAUM. I would defend to the end your right to be wrong, Representative Johnson.

Mr. JOHNSON. I am Ron Johnson, a Representative from Panama City, FL. I was elected to the legislature in 1978 and had no idea at the time that I would become the primary sponsor of firearms legislation.

I grew up in northwest Florida. My family was poor, but proud, not unlike many families in that area. My father had to hunt to feed the family.

I have also experienced the tragedy of loved ones being killed by the misuse of firearms. You have all had a friend that you grew up with, a friend you shared with, a friend that you have cried with. My friend was my cousin, Larry Lewis. He was only 18 when he was shot with a .22 in the stomach. It took him 3 hours to die a slow agonizing death.

So, you see, firearms are essential to life for some and instruments of destruction in the hands of others.

I entered the Legislature and found myself struggling with the same problems and frustrations that you face, Senator, are facing, and unfortunately will face in the future—jobs for our citizens, homes for the homeless, health services. The list is endless and our efforts to solve these problems are tireless. Unfortunately, at the top of almost every State's list is crime. Our citizens fear for their safety and the safety of their loved ones.

I do not believe there exists a problem any greater today. It is impossible to calculate the pain and suffering that the criminal is causing our citizens, not to mention the devastating drain on governmental resources. You will agree that with all the attention and the tremendous resources we have committed, government has not been able to insure our citizens protection from criminals.

Former Florida Attorney General Jim Smith told Florida legislators that of some 700,000 calls for help by citizens to Dade County authorities, only 200,000 received any police response. Smith was asked why so many citizens in Dade County were buying guns and he said, "They damn well better, they've got to protect themselves."

The courts have held that government and its agents—law enforcement—are under no general duty to provide public services such as police protection to any particular individual citizen. The fact is police cannot be everywhere and it is therefore the responsibility of the individual to protect themselves. There is a difference between honest law-abiding citizens and criminals.

I am here to plead for the rights of those "too often silent" law-abiding citizens. Those quite citizens are tired of being victims. Their voices are beginning to be heard. Law-abiding citizens are fed up. They are saying "enough." They are saying, "at the very least we ought to have the right to protect ourselves." With them, it is not a constitutional issue, it is an issue of survival.

Tell the young lady in California that her rapist, the man who cut her arms off and left her for dead, should be a free man after only a few years in prison. You should not and cannot tell her she cannot protect herself from such a hideous attack.

The man who killed my cousin is a free man today, having served only 7 years in prison for murder.

Law-abiding citizens do not want revenge, they want justice. Law-abiding citizens do not want to take the law into their own hands, they simply want the right to protect themselves.

This room is full of radically divergent philosophies on firearms, some anti, some pro. However, I challenge you to find a single person here who is not appalled by the deeds of criminals. Look at the facts. In every city, in every county and every State where more stringent gun regulations have been imposed, there is no change or an increase in the crime rate. In areas where gun laws are liberalized, the crime rate has been known to decrease.

In recent Department of Justice studies conducted among convicted felons, it is clear that the implied threat that an individual is armed and potentially capable of defending themselves is a greater deterrent than all else.

In the same report, it is also clear that criminals primarily acquire their firearms on the street from friends and on the black market. Based on these facts, I introduced two pieces of legislation in Florida, the self-defense concealed carry bill and Statewide preemption bill. Two-thirds of the membership of the House and Senate cosponsored the bills. Both bills were endorsed in an historic press conference by the Florida Sheriffs Association, Florida Police Chiefs Association, the Police Benevolent Association, the Fraternal Order of Police, the Florida Department of Law Enforcement, Florida police officers, and Florida Law Enforcement Officers Association.

The bill wiped out all of those long waiting periods in the State of Florida, yet law enforcement supported the legislation.

Senator METZENBAUM. Can you wind up, Representative Johnson?

Mr. JOHNSON. If you will allow me, Mr. Chairman, I would like to share a couple of quick examples and then I will conclude.

Senator METZENBAUM. Go ahead.

Mr. JOHNSON. Janice Franklin was the mother of two and also was my cousin. She, too, died at the hand of a criminal. She was the clerk in the Western Union office in Panama City. She was dragged out of the office by James Armando Card, who took her to a secluded area of town and slit her throat while yelling, "Die, die, die."

He purchased the knife 20 minutes prior to committing the crime at a sporting goods store that also sold firearms. Would you expand your waiting period to include knifes? What about all instruments that are used by murderers?

The Tallahassee newspaper, The Democrat, reported, "Charlie Hughes might have died if not for his gun." In early March, just before the legislative session in which I passed the legislation, Charlie Hughes' mobile home in the capital city of Tallahassee was broken into. Two thugs severely beat the 65-year-old retiree, tied him up with his telephone cord, and stole $50, and put him in the hospital.

When iron bars and seven new locks did not stop the men from breaking in a second time, Hughes shot and critically wounded one of the intruders who had threatened him. Charlie Hughes is a law-abiding citizen. Charlie Hughes is alive today. However, if this waiting period had been in effect, he well could be dead.

I ask you, please do not sit comfortably with the metal detectors outside and your guards for protection and deny the average citizen their ability to defend themselves and their families.

Thank you very much, Senator.

Senator METZENBAUM. Thank you very much, Representative Johnson.

As a matter of fact, it seems to me that in many respects we are much in accord. You say that people ought to have the right to own a gun, have a gun available to protect themselves, and I say the same thing. What we are arguing about is 7 days, the 7-day waiting period, with an exception where there are circumstances that require it.

Now, I note that you recently sponsored a bill—and I do not know if this is the same bill—that sets up a license-to-carry system requiring that anyone who wants to carry a handgun be fingerprinted, requires a record check, allows the State up to 90 days time before it must issue the license. That bill also sets up a State-wide computerized information bank containing the names of everyone who has a license. NRA supported that bill.

Now, how can you tell me, when you have a 90-day waiting period, you have fingerprinting, you have a State-wide computerized information list, how can you tell me that a 7-day waiting period is burdensome or unwise? I am having difficulty following that.

Mr. JOHNSON. Well, it is not very difficult at all, Senator. The self-defense concealed carry bill allows an individual to carry a firearm on their person. They can walk the streets with that concealed weapon. Just like law enforcement, there is a higher standard that must be attained for that individual who is going to carry that firearm concealed. Yes, in the State of Florida, for the first time now, we are going to have the ability to know who is carrying concealed firearms and who is not, and those folks who are normally antigun were very much opposed to this legislation. Why? I cannot imagine, because there are a lot of people on the streets who are victims today because they were too weak to protect themselves against the criminals, the predators that are out there. And all I say to you is that we ought to allow those law-abiding, honest citizens who cannot physically defend themselves to be able to have the right to purchase a firearm and to be able to——

Senator METZENBAUM. Now, answer one simple question.

Mr. JOHNSON. I will be glad to reply.

Senator METZENBAUM. What is so bad about having a 7-day waiting period so that the applicant for the gun may be checked out as to mental state or criminal record, with the right, if there is a need in the individual to have the gun in less than 7 days, for the period to be waived? What is so bad about that?

Mr. JOHNSON. The best example I can give you, Senator——

Senator METZENBAUM. Do not give me an example, just tell me what is bad about it. Why——

Mr. JOHNSON. What is bad about it is the fact that Charlie Hughes would not have been allowed to purchase a firearm, and Charlie Hughes would be dead today, and those examples exist time and time again. Let me tell you, we do not have records, Senator, of those who purchased a firearm and saved their own life be-

cause they were able to. We do not have records of those who tried to purchase a firearm and was denied because there was a waiting period and died because of it.

Senator METZENBAUM. What did Charlie Hughes use to defend himself?

Mr. JOHNSON. A firearm.

Senator METZENBAUM. What kind?

Mr. JOHNSON. A handgun.

Senator METZENBAUM. He could have had a rifle at home, he could have had a shotgun at home, and actually could have had a handgun at home if he just waited 7 days or said that there was some emergency circumstances that caused him to need the gun in a hurry, could he not?

Mr. JOHNSON. Well, you could take any general example. If an individual was unarmed, their life was threatened, they felt the need to protect or defend themselves—you know every day that people find themselves in a circumstance where they need protection from criminals. When you call law enforcement, law enforcement has the best intentions, and I admire them for all the work that they do with the limited resources that they have, but they cannot protect every single citizen in this country. An individual from time to time may find the need to protect himself and require the purchase of a firearm.

Senator METZENBAUM. I am very pleased that my colleague, Senator Hatch, has joined us.

Senator Hatch, do you have any questions.

Senator HATCH. Thank you so much, Mr. Chairman. I appreciate being with you here today.

Let me just ask you this, Mr. Johnson: When your bill was considered in the Florida State Legislature, what response did you get from the law enforcement organizations and the police?

Mr. JOHNSON. This debate has been going on in Florida for—I have been there 10 years and the debate has been going on that long. What I have seen in Florida is almost a 180-degree shift on the part of law enforcement as well as the majority of the citizens in the State of Florida. People have gotten to the point where they are fed up with being victims. They are not violent people, they are timid individuals who simply want the right to be able to protect themselves.

And I think Willis Booth, who is the executive director of the Florida Police Chiefs Association, who served in the streets for over 35 years, probably said it best, and I will kind of summarize what he had to say, and that is that in those 35 years of being out there and trying to protect individuals from criminals, he has come to the realization that law enforcement cannot protect everyone, that with all the resources that have been applied in the effort, we have not succeeded and that it may just be that honest, law-abiding citizens should have that right to protect themselves and, because of that, we began a dialogue where we brought all of the major law enforcement organizations together in one room, we locked the door and we worked on legislation, and when we finished we had a piece of legislation, as I said earlier, that every major law enforcement organization in the State of Florida could support and sup-

ported wholeheartedly and as a result we were able to pass the legislation.

I believe strongly that Florida will be a safer place in the future because of the passage of the legislation. We tried it the other way long enough and it has been proven not to work. In every single instance where you see more stringent gun regulations, you are going to see generally increases in crime rate. It does not work, so we have changed it in Florida.

Senator HATCH. Well, let me just say this, Mr. Chairman: As of July 1985, as part of the landmark debate on firearms reform, the Senate rejected a waiting period amendment by a margin of 71 to 23. Now, S. 466, this bill, the Handgun Violence Prevention Act of 1987, is revisiting that issue and it would require, as I understand it, anyone purchasing a handgun to wait for a period of 7 days so the local authorities may, if they choose, conduct a background investigation of the purchaser of such weapon.

During the last Congress, the Senate rejected this waiting period for several reasons, and I am interested in learning here today if the reasons for that rejection have changed. As I remember the debate, some 32 States have already considered this type of legislation and have rejected it, 32 out of the 50. So I am going to be anxious to know if circumstances have changed, and maybe I will ask Sergeant Pepersack that in just a second.

Now, during the consideration of this measure during the 99th Congress, the Department of the Treasury, which is one of the two leading law enforcement agencies of the Federal Government, opposed the waiting period proposed as well. This position was based on the failure of studies to demonstrate that waiting periods that have been employed in one form or another over the last 60 years actually limit access to guns by criminals. It is also a fact that criminals do not wait in line to obtain weapons, to obtain guns, and they certainly do not generally submit to recordkeeping when trying to acquire a weapon to commit a crime.

To the contrary, studies indicate that over 80 percent of all guns used in crimes were obtained through illegal channels and not through the licensed dealer. Finally, the 1985 Senate debate also established that the imposition of a waiting period would seriously burden the sportsmen and law-abiding citizens—which is the point you are making, Mr. Johnson, as well.

Sergeant Pepersack, let me just ask you this question: Has that circumstance changed, where 32 States have rejected waiting periods as part of their weapons laws?

Sergeant PEPERSACK. I am not familiar with what every State in our country has as far as firearms registration or firearms regulations concerned as far as a waiting period. I can tell you about Maryland.

Senator HATCH. Sure.

Sergeant PEPERSACK. And with regard to your statement about criminals getting 80 percent of their weapons through illegal channels, we know that they do not always do that, and if we can stop 20 percent, I think that is pretty good.

Senator HATCH. You may not be able to do that, that is the point, but at the same time you are going to burden every law-abiding citizen who wants to obtain a weapon. I think that is why 32 States

have rejected this. I am sure you can give isolated examples where this might help, but they are isolated.

Sergeant PEPERSACK. I think the isolated example when we are talking about handguns is a person who has to have a handgun immediately. In Maryland, there is an exception, as in the Federal law. The person who can purchase a handgun in 1 day in the State of Maryland through a licensed dealer is a law enforcement officer. He may need it. Myself, as a private citizen——

Senator METZENBAUM. We have an exception in this bill, too.

Sergeant PEPERSACK. Myself as a private citizen, now this weapon has to be used in a duty capacity. Myself, if I walk into a gun shop, as Bob Pepersack, to buy a handgun for any other reason but for official duty capacity, I wait 7 days. I find that no burden.

Senator METZENBAUM. I am going to have to move along.

Senator HATCH. That would be fine. I would just suggest this to you: I do not know what your incidence of crime is compared to, say, Utah or other States——

Sergeant PEPERSACK. I could not answer you, Senator.

Senator HATCH [continuing]. But I think you are going to have a rough time showing that a 7-day waiting period is going to reduce the incidence of crime.

Sergeant PEPERSACK. I know how it has worked in Maryland.

Senator HATCH. Well——

Sergeant PEPERSACK. It has worked well.

Senator HATCH. It has been tried in other States and it has not worked well and that is what bothers us.

Senator METZENBAUM. I thank both of you for being with us today. We appreciate your contribution.

I want to say to my colleague from Utah that when you talk about whether there is a need for this bill, I wish you had been with us when Sarah Brady testified about John Hinckley getting his gun without a waiting period and doing so much harm to Jim Brady. And a young man from Cleveland, Tom Falzone, testified about his friend who was shot by a man who had had a criminal record, who could have been stopped from getting a gun two hours after he bought the gun, he came into the Cleveland Public Library and killed a person whom he had never met before and never saw before. And Ross Misher, a young man sitting in the front row there with his hand up to his lips, a 16-year-old boy, talking about having lost his father because an employee of his father's went out to lunch, bought a gun and came back and shot the father and shot himself as well, and Ross says none of them even know why he did it. That would not have happened, all three of those cases, there would have been a different result.

I am sorry that you missed it, because I said then and I will repeat now, I have never heard more significant or touching testimony in connection with any legislation around here than I heard in from these three individuals.

Senator HATCH. Let me just comment, Senator. I appreciate those comments. I, of course, have heard Mrs. Brady's story and I do not think there is anybody in the country who has more sympathy for what she and her husband have gone through. And these other stories I am aware of as well and, I might add, there are some others. There is no question that there are always going to be

terrible examples of what happens when you have criminals in America. But there are 230 million people out there and not all of them live in Maryland. A lot of them live in States where they do not want these kinds of restrictions and where the crime rates may be a little bit lower.

I suspect that individual States can do whatever they want to. If Maryland decides that they need a waiting period, I back Maryland in having that waiting period. I cannot say that I think they are right, I just say that they have a right to do that as a State. But for us to preempt all of the people in this country, 230 million of them, because there are some examples that all of us have tremendous sympathy for, and rightly so, I think may not be the best argument that can be made. But I am aware of these and I have heard Sarah Brady before, and I have great sympathy for her and I can see why she feels the way she does.

Senator METZENBAUM. Thank you. Senator Hatch, do you have an opening statement.

Senator HATCH. No opening statement, no.

Senator METZENBAUM. Thank you very much.

Our next panel consists of Jim Baker——

Senator HATCH. Could I interrupt for a second? I have a statement by the Honorable Senator McClure which I would like to put in the record.

Senator METZENBAUM. Without objection, it will be included in the record.

[The prepared statement of Senator McClure follows:]

PREPARED STATEMENT OF SENATOR JAMES A. MCCLURE

I doubt if there is a person here who doesn't want to stop violent firearms crime. In that goal we are all united. And it is a goal we have been pursuing for some time now. My observation of that pursuit leads me to this conclusion: many of the methods being used are not working. Prime among these methods is a waiting period for the purchase of a firearm. Strangely enough, the waiting period's failure has not caused its abandonment. Instead, we see attempts to redouble this method. Its supporters seem to be saying, "If a little doesn't work, maybe what we need is more."

California presents a classic example. Starting in 1940, it imposed a 2 day waiting period. Over the years, this waiting period was lengthened to 15 days, longer than any other state. This increase in the waiting period has not reduced violent crime. Between 1965 and 1985, the rate of violent crime per 100,000 persons rose over 170 percent.

Waiting periods don't work, and they don't work for the simple reason that the only people affected by them are those who obey the law. In that respect a waiting period resembles all other attempts to control criminal behavior by controlling an inanimate tool. Violent criminals don't buy firearms through legal channels. A waiting period means nothing to a stick-up artist or a murderer. It does, however, mean something to law abiding citizens. It has the practical effect of making firearms ownership an aristocratic privilege, not a Constitutional right. For example, in New Jersey, for one year police refused to issue any permits. Is there really anyone here who believes that during that year, no criminals obtained firearms in New Jersey?

We must also consider that much of the information pertinent to the legal purchase of a firearm is not available to the police, even if they can afford the time to check every application. While law enforcement resources are being used to check the background of the law abiding firearms purchaser, thugs are left free to obtain firearms illegally. We are diverting our already overburdened police away from actual investigation and curtailment of genuine firearms crime.

The federal government has no business imposing waiting periods on the states. Those states desiring limitations have every opportunity to allow their citizens or their legislatures to vote waiting period laws into effect. In fact, many states have rejected the notion of the waiting period. Why should the federal government second guess this choice?

Finally, I am offended by the cruel sophistry that John Hinkley's attack on President Reagan, and the tragic wounding of Mrs. Brady's husband would have been prevented by a waiting period or a background check. When Hinkley purchased the gun he used, he had no felony record, no recorded record of mental illness or any other bar to firearms ownership that would have been unearthed by a background check. If the police had done a check on John Hinkley, they would have given him the go-ahead. The gun he used in his assassination attempt was purchased more than six months before the crime was committed. To take advantage of Mrs. Brady's grief, and to intimate that this crime could have been prevented is a cheap and dishonest trick.

In short, waiting period laws, as do all firearms control laws, lull us into a false sense of security. And when, as always, they do not work, they invite yet harsher restrictions.

S. 466 addresses a real problem, but it addresses it with a palliative. The only cure for violent firearms crime is to apprehend the criminal, not harass the law abiding citizen. We have seen that waiting periods don't work; let's not fritter away our law enforcement efforts.

Senator METZENBAUM. Our next panel consists of Jim Baker, Director, Government Affairs, National Rifle Association; Robert B. Kliesmet, National President, International Union of Police Associations; Richard Boyd, National President, Fraternal Order of Police, McCloud, OK; Robert Scully, National Association of Police Organizations; and Darwin McGlumphy, Patrolman and President, Akron Police Patrol, Akron, OH.

We are happy to have all of you with us here this morning. We are running tight on time and I am going to hold you to the 4-minute time. I am not going to go on for the extra minute, please make note of that.

Although, Mr. Baker, take your full 5 minutes, if you will please proceed. We are happy to have you with us.

A PANEL CONSISTING OF JAMES J. BAKER, DIRECTOR, GOVERNMENT AFFAIRS, NATIONAL RIFLE ASSOCIATION; ROBERT B. KLIESMET, NATIONAL PRESIDENT, INTERNATIONAL UNION OF POLICE ASSOCIATIONS; RICHARD A. BOYD, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE; ROBERT T. SCULLY, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS; AND DARWIN McGLUMPHY, PRESIDENT, AKRON POLICE PATROL

Mr. BAKER. Thank you, Mr. Chairman. I would like to ask that my entire comments be included in the record, if I may.

Senator METZENBAUM. Without objection, they will be.

Mr. BAKER. Thank you.

Before proceeding to the discussion of the substantive issues surrounding S. 466, I would like to take this opportunity to lay to rest one of the lynchpin myths used to argue in favor of a national waiting period and background check before purchase of a pistol or revolver. It is unfortunate that we must spend so much time belaboring this point, but it is equally unfortunate that advocates of gun control continue to misrepresent the facts concerning the tragic assassination attempt on President Reagan.

The allegation is made that if such a waiting period and background check had been in place, John Hinckley would have been caught because he lied on a Federal form when he purchased the revolver used in his attack. It is further claimed that Hinckley would have been put in jail, instead of on his way to Washington,

DC, had such a background check been conducted. These allegations are false.

John Hinckley purchased a total of eight firearms—two .38 caliber revolvers and four .22 caliber revolvers, as well as two rifles—from August 1979 to January 1981. The .22 caliber revolver used in his assault on President Reagan was one he purchased in October 1980, more than 6 months before he left for Washington, DC. Indeed, this purchase and all previous purchases made by Mr. Hinckley were legal and they would have been legal under this or any other waiting period scheme ever devised.

At the time of this purchase and up until his attack on the President, John Hinckley had no felony record, he had no recorded history of mental illness or commitment, as no check currently involves police inspection of private conversations with psychiatrists, and he was using a valid Texas driver's license issued in Texas. The contention that a background check would have uncovered the fact that he did not physically reside at the residence listed is a distortion of the criminal record checks made by police. Had a check been run and all criminal records been thoroughly and completely available, they would have confirmed that Hinckley was not a prohibited person and that his last known address was Lubbock, TX.

Simply put, no detection system ever proposed or devised has mindreading capabilities. Mr. Chairman, criminals do not wait. The one thing that most upsets the law-abiding citizen, and rightfully so, is that they are the only ones who obey gun control laws. They are the only ones who comply with the red tape, the regulations and costs. Criminals continue to avoid the system; they always have, and this is never more true than with waiting periods.

Waiting periods force a prospective firearm purchaser to submit to a background check and a 7-day waiting period, while police conduct the background check. The concept is not new. Congress recently considered and rejected it, as have the majority of States, and for good reason, waiting periods do not reduce crime. Instead, they create a monumental waste of effort and expense to support a bureaucracy engaged in the business of surveying law-abiding citizens, because that is who waiting periods affect.

The fundamental fact seems to allude waiting period proponents: Criminals do not obtain firearms from legitimate sources. Prof. Philip Cook's study at Duke University confirmed that there is no convincing empirical evidence that a police check on handgun buyers reduces violent crime. Most felons and other ineligibles who obtain guns do so not because the State screening system fails to discover their criminal record, but rather because these people find ways of circumventing the screening system entirely.

In fact, in States restricted by waiting periods, crime rates climb faster than the national average. Douglas Murray, of the University of Wisconsin, conducted a study for that State's Council on Criminal Justice on the effects of gun control laws, waiting periods in particular, in all 50 States, and concluded that the severity of handgun control laws has no significant effect on violent crime. Thus far, the relationship between gun laws and crimes is nonexistent. Worst of all, waiting periods cause an immense drain on

law enforcement resources, diverting police from apprehending violent criminals to conducting investigations into the private lives of law-abiding citizens.

And it is no secret who ultimately pays for moving mountains of meaningless paperwork—the same law-abiding citizens. A better course is clear: Americans must no longer permit violent crime without certain punishment. Those who commit violent criminal acts with any firearm should face a mandatory additional prison sentence.

While waiting periods have failed miserably in those States beguiled into testing them, mandatory penalties for criminal misuse of firearms have shown dramatic effect in States such as Delaware, Arkansas, Virginia, South Carolina, West Virginia, and Florida.

As the Wall Street Journal observed shortly after John Lennon's death——

> The sudden hue and cry for more gun control at such times is a kind of copout, the sort of copout that is part of the problem in America. The country knows that something is wrong. Too many are turning to crimes of violence. The notion that this can be changed by controlling guns, we worry, may be an excuse for avoiding the hard work of making our decrepit criminal justice system start to function, and the even harder work of buttressing what used to be called the Nation's moral fiber.

Thank you, Mr. Chairman.

[Submissions of Mr. Baker follow:]

WAITING PERIOD TESTIMONY OF JAMES J. BAKER, DIRECTOR, GOVERNMENT AFFAIRS, NATIONAL RIFLE ASSOCIATION INSTITUTE FOR LEGISLATIVE ACTION

Before proceeding to a discussion of the substantive issues surrounding S.466, The National Rifle Association Institute for Legislative Action would like to lay to rest one of the lynchpin myths used to argue in favor of a national waiting period and background check before purchase of a pistol or revolver. It is unfortunate that we must spend so much time belaboring this point; it is equally unfortunate that advocates of "gun control" continue to misrepresent the facts concerning the tragic assassination attempt on President Ronald Reagan.

In much of the propaganda produced in support of S.466, the allegation is made that, if such a waiting period/background check system had been in place, "John Hinckley would have been caught" because "he lied on a federal form" when he purchased the revolver used in his attack on President Reagan. It is further claimed that Hinckley "would have been in jail, instead of on his way to Washington, D.C." had such a background check been conducted. These allegations are irrefutably false. Their continued use merely points up the fact that HCI and sponsors of the legislation before this Committee have only emotional rhetoric to justify the wholesale abrogation of constitutional rights (under the 2nd and 5th Amendments) represented by S.466.

John Hinckley purchased a total of eight firearms -- two .38 cal. and four .22 cal. revolvers, as well as two rifles -- from August 1979 to January 1981. The .22 cal. revolver used in his assault on President Reagan was one of two he purchased in October 1980, more than six months before he left for Washington, D.C. Federal law was so diligently complied with in this case by the seller that multiple purchase forms were quickly filed with the regional office of ATF after the purchase.

Indeed, this purchase, and all previous purchases, were legal. And they would have been legal under this or any other "waiting period" scheme ever devised. At the time of his purchase, and up until his attack on the President, John Hinckley had no felony

record, he had no recorded history of mental illness or commitment, (as no check currently involves police inspection of private conversations with a psychiatrist) and he was using a valid Texas driver's license issued May 23, 1979, to make his firearms purchases. The contention that a background check would have "uncovered" the fact that he did not physically reside at the address listed on his license is a willful distortion of the criminal record check made by local police. To the contrary, had a check been run and all criminal records been thorough and completely available, they would have confirmed that Hinckley was not a prohibited person and that his last known address was in Lubbock, Texas.

Simply put, no detection system ever proposed or ever devised has mindreading capabilities. Advocates of the background check do a gross disservice to the nation by asserting that the tragic assassination attempt on President Reagan would have been prevented by the imposition of any regulatory "gun control" scheme. I urge this Committee to look carefully at other arguments made by those who would make that claim using the case of John Hinckley as evidence.

The long history of waiting period schemes points up the failure of those systems in other criminal justice areas, as well. Waiting periods, permit-to-purchase laws, and police background checks have been instituted around the country for most of the century. After the 1911 Sullivan law in New York, many were enacted in the 1920's and 1930's, about the same time that a Uniform Crime Reporting system was implemented to facilitate the collection of crime data from cities and states throughout the nation. Thus, criminologists and other scholars have had ample time and abundant evidence with which to prove just how effective a waiting period is in deterring violent crime.

In October 1975, Douglas R. Murray of the University of Wisconsin published "Handguns, Gun Control Laws and Firearms Violence." Using the standard statistical methods — a multiple regression statistical framework — he compared the various state firearms laws -- including purchase permit, waiting period, police notification, retail

license, minimum age, permit to carry openly, and permit to carry concealed -- to crime rates, while considering socio-economic conditions. Murray found that "gun control laws have no significant effect on rates of violence beyond what can be attributed to background social conditions." Secondly, he found that such laws do not effectively limit access to guns by the violence-prone; and, finally, accessibility to handguns "seems to have no effect on rates of violent crime and firearms accidents, another reason why gun control laws are ineffective."

Murray summarized: "On the basis of these data, the conclusion is, inevitably, that gun control laws have no individual or collective effect in reducing the rates of violent crime."

Murray's study was replicated by a self-proclaimed "gun control" advocate, Professor Matthew DeZee at Florida State University. His conclusion? "The results indicate that not a single gun control law, and not all the gun control laws added together, had a significant impact . . . in determining gun violence. It appears, then, that present legislation created to reduce the level of violence in society falls far short of its goals. . . Gun laws do not appear to affect gun crimes." Keep in mind that the types of laws studied by these scholars were identical to the legislation before you today.

Another unimpeachable study was conducted by two professors at the California State University at Long Beach. Professors Joseph Maggaddino and Marshall Medoff studied "waiting periods" and "cooling-off" periods and found them to be totally useless in curbing crime. They found no relationship between a waiting period or cooling-off period and any type of violent crime, except that they noted a slightly higher homicide rate and a slightly higher robbery rate in places with such laws.

Currently, there are sixteen states with application and waiting periods required for the purchase of a pistol or revolver. Additionally, there are scores of cities and counties that have their own restrictive systems of this type. There are also six states that do not technically have an application and waiting period system, but do have a

licensing system or require a permit to purchase firearms. Again, the majority of these systems have been in place for decades, giving criminologists such as Murray, DeZee, Maggaddino and Medoff ample opportunity to unearth any supposed efficacy these systems have. Likewise, there has existed more than sufficient data for evaluation by those who are represented by HCI. We find that, despite a great deal of sympathy, albeit short-lived, in the academic community for the idea of restrictive waiting periods, anti-gun scholars have failed to discern any benefits of the waiting period concept. A few, notably Massachusetts Professor James D. Wright, have been honest enough to change their position on this issue after their research revealed the facts.

In keeping with this criminological evaluation, which actually served to confirm common sense, the trend in this nation has been towards rolling back or repealing existing waiting periods at the state and local level. Virtually no state or locality has recently opted to add a waiting period scheme to their firearms regulations, nor even to increase the length of the wait. In fact, voters in many states and cities have chosen to defeat attempts at imposing or lengthening existing waiting periods. The story at the state level in the recent past is of pro-gun initiatives, such as preemption and constitutional right to keep and bear arms amendments, passing overwhelmingly in reflection of the public's support of lawful, private firearms ownership. While waiting period proponents may quote as many simplistic polls as they choose, it is these votes of duly elected state legislators or of individual citizens in referenda, that should be viewed as the true gauge of public opinion. Clearly, public opinion reflected at the ballot box is running strong and hard <u>against</u> waiting periods and police background checks.

Preemption represents an implicit rejection of waiting periods and a justifiable claim for supremacy of the state legislative process in setting firearms regulatory law. Currently, 32 states have preempted the field in firearms legislation, claiming for the state legislature the sole responsibility over the regulation of firearms. Fully twenty-five of those state legislatures have passed preemption in the last five years, a clear

indication of the mood at the state level.

Just this year, Virginia and Florida enacted sweeping preemption laws. In Florida, passage of the bill was achieved with significant law enforcement backing and in opposition to the national policy of the IACP, which attempted to browbeat their state affiliate into accepting their view of "gun control." The Florida law enforcement community refused to engage in the politics of their national office, and strongly supported the preemption bill that eventually passed. This bill immediately voided dozens of waiting periods and police background checks throughout the state. Some of the measures rejected were similar to the legislation before this Committee. Ironically, some of the repealed waiting periods with background checks were found in areas often cited by HCI for their allegedly "effective" gun laws. Apparently the citizens of those communities did not agree with HCI's assessment of their law. Willis Booth, a former chief of police with 40 years of law enforcement experience and lobbyist for the Florida Police Chiefs Association succinctly expressed Florida law enforcement's assessment of waiting periods and background checks: "I think any working policeman will tell you that the crooks already have guns. If a criminal fills out an application and sends his application . . . he's the biggest, dumbest crook I've ever seen."

In addition to the rejection of waiting periods through preemption, the states and voters in scores of communities have explicitly rejected those schemes when given the opportunity to vote.

In the last decade, state legislatures in Colorado, Florida, Louisiana, and Oklahoma have been graveyards for misguided waiting period legislation. The state of Arkansas first passed, and then repealed, a waiting period law. In your own state of Ohio, Mr. Chairman, waiting periods have died in the 114th, 115th, and 116th General Assemblies, as well as in the most recent session of the Maryland General Assembly. The state legislature of South Carolina killed a waiting period bill on the floor of the House in an overwhelming vote.

This Congress, and indeed many of you here, have also debated this issue ad nauseam. The most recent action on a waiting period was rejection by the U.S. Senate in debate on the McClure-Volkmer legislation, S.49. At that time an amendment was offered that was similar to the current legislation, except that the time of the wait was to be 14 days. Senator McClure rose in opposition to that amendment and this is part of what he said:

> Under this amendment, purchasers of handguns would be required to wait 14 days between purchase and delivery, which supposedly would allow local police authorities to check criminal and mental records in the hope of screening out prohibited buyers.
> The main argument is the States will have an opportunity -- and I stress opportunity -- to do a background check if they so desire. It does not provide for such a check. It merely is alleged to give the States the opportunity. The argument is completely specious. If a State, in fact, desires to have a background check, it can do so now simply be enacting such a waiting period and check as a matter of State law. The only areas which do not have such State waiting periods are obviously States which do not want the opportunity. Thus, the amendment serves absolutely no purpose."

Senator Dole explained his opposition to a nationally-mandated waiting period: "State and local authorities are in the best position to know whether a waiting period would be effective in deterring crime, and thus, I believe the decision should be left to them."

Several other members of this body joined these Senators in speaking out against a waiting period, and the amendment was defeated by a three-to-one margin. Waiting period legislation went down in defeat in the 99th Congress, just as it has died in virtually every Congress in the last few decades. And deservedly so.

Advocates of S.466 will point out that this is a different bill, even if merely marginally different.

While S.466 does not mandate that the chief law enforcement officer conduct a check of a potential handgun transferee's criminal record as a precondition to the lawful transfer of a handgun, the purpose of the bill is plainly to encourage such a check. A review of the procedures used to conduct a criminal history check demonstrates, however, that, as a practical matter, the criminal history check contemplated by S.466 is

a time-consuming exercise in futility which will not achieve its purported goal but will deprive peaceful and honest Americans of their right to acquire firearms of their choice at the time they choose to acquire them.

Before I discuss the details of the criminal history check procedures, I would emphasize the fact that S.466 does not mandate a criminal history check. The reason for this is certainly two-fold.

First, as a matter of constitutional law, Congress is not empowered by any clause of the Constitution to impose duties on state and local officials. As the Supreme Court has explained

> the federal government, under the constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the State. Kentucky v. Dennison, 24 How. 66, 107-8 (1861).

This limitation on congressional power is particularly acute in the area of law enforcement since enforcement of the criminal laws is one of the core functions of a state government. Thus, for the federal government to impose duties on local law enforcement officers would be a most serious intrusion upon the ability of the states to utilize their already limited law enforcement resources.

The second reason for the absence of a mandatory criminal records check by local law enforcement agencies is that those who support the concept embodied in S.466 wish to have law enforcement support for the bill. Yet, a federal law which imposed duties on state and local law enforcement plainly might not be supported by state and local law enforcement; indeed, it might be actively opposed by them. Thus, the result is a bill which, by its express terms, "shall [not] be interpreted to require any action by a chief law enforcement officer which is not otherwise required." This places those in the law enforcement community who are supportive of any effort to prevent private acquisition and possession of firearms in a position where they can support legislation which appears

to involve them in the acquisition process but which, in reality, allows them to do nothing.

The wording of the legislation and its aims cry out for sober examination by those familiar with the NCIC system, the system that would have to be utilized to accomplish any background check. I will briefly review the functioning of the Interstate Identification Index (III or "Triple I") of the FBI's National Crime Information Center (NCIC).

The III, as it name reflects, is merely an index; it is not a repository of records. Thus, if it is queried, usually by using a name and birthdate, it merely refers the questioner to the location of records on a particular person. There are currently 20 states participating in the III, which means that, if the III indicates that a criminal record is located in that state, inquiry must be made to that state's record repository. Records from the other 30 states are retained by the FBI.

In addition, the current procedures of the NCIC limit access to the III to "criminal justice purpose" inquiries. Although the licensing of firearms is, as of this year, considered a "criminal justice purpose," federal regulations limit access to the III for licensing of firearms to those law enforcement agencies which are authorized by a state statute approved by the U.S. Attorney General. Thus, except in those states which already have statutes authorizing a criminal records check before a person may acquire a handgun, S.466 is nothing more than an empty gesture.

Finally, the only type of check which will be available to the chief law enforcement officer, the person to whom S.466 assigns the criminal history check function, will be a criminal records "name check" as S.466 does not mandate that a potential handgun transferee provide fingerprints, the only form of positive identification for checking criminal histories. With only a "name check" being conducted, all that can be determined is whether a person with that name has a criminal history. But, as Assistant Attorney General John R. Bolton noted in a letter of March 19, 1986 to the House Judiciary

Committee Chairman (a copy of which is attached to my testimony)

> Those persons with a criminal record who are prohibited from purchasing a handgun are the ones most likely to obtain false identification documents to support a new name.

Thus, the "name check" is not likely to detect those who are ineligible to acquire firearms.

Moreover, as Mr. Bolton further noted, "Even if the purchaser uses his true name, it may not be possible to determine with certainty whether or not a criminal record belongs to the purchaser or another person with the same name. There are many people with identical names and similar identifiers who have criminal records." As noted above, that certainty can only be assured with a fingerprint check.

The utility of the criminal record check is not, however, limited only by the fact that only a "name check" is undertaken. Even if a true name was used and even if there was only one person by that name, the records of the III are automated only for records of persons born in or after 1956; records of persons born before 1956 would have to be obtained by providing a written request, accompanied by fingerprints, to the FBI's Identification Division. To process those requests takes, at a minimum, 2 to 3 weeks. Thus, even if fingerprints were provided with a transferee's sworn statement -- which is not called for by S.466 -- since the majority of handgun transferees, particularly from licensed dealers, will, for many years, be persons born before 1956 -- federal law prohibits the transfer of handguns by licensees to those under 21 years of age -- the criminal records check would not be possible within 7 days.

Added to the inability of chief law enforcement officers to use the automated III for many handgun transfers is the fact that the 20 states which have their own record repositories which are directly accessible to other states may not authorize access to their criminal history records by other states for firearms licensing purposes. Similarly, the remaining 30 states could forbid dissemination to chief law enforcement officers of other states for firearms licensing purposes of the criminal history records provided to

the FBI. Indeed, it may take express statutory authorization, on a state-by-state basis, for the chief law enforcement officers of one state to use the criminal history records of another state.

The proceeding litany of difficulties in utilizing the III does not end with the limitations of its current procedures as those procedures would apply to S.466. Instead, the Committee should take account also of the flaws in the underlying records, upon the accuracy and completeness of which rests on the whole premise of S.466. I would, therefore, like to quote from the testimony of Jerry Berman, ACLU's Chief Legislative Counsel, given July 16, 1986 before the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee.

"In 1982 the Congressional Office of Technology Assessment conducted and published 'An Assessment of Alternatives for a National Computerized Criminal History System' which concluded with respect to arrest records:

> Since 1970, Congress has expressed its concern about the completeness and accuracy of criminal history records. Based on the results of record quality research conducted by OTA and others, the quality of criminal history records at the State Level has improved; however, significant problems remain, especially with respect to court disposition reporting. The average nationwide disposition reporting level increased from 52 percent in 1970 to 65 percent in 1979, but has changed little since then (to 66 percent in 1982). Fourteen of 41 States in 1979 and 13 of 47 States in 1982 indicated that disposition reporting to the State repositories was less than 50 percent. In both 1979 and 1982, eight States indicated a reporting level of less than 25 percent. . . . 30 of 49 have automated or manual procedures for the regular review of court disposition reporting and only 13 of 49 States have conducted a record quality audit. (OTA, p. x)

Although the FBI took issue with some of OTA's findings and conclusions, recent data essentially confirms OTA's findings and indicates that little has changed since OTA recommended the need for systemic reform. On July 1, the OTA published a report on 'Electronic Record Systems and Individual Privacy' that included an appendix updating its 1982 report on the NCIC. This report states that although several actions have been initiated at the federal level to improve the accuracy of criminal records, that a variety of new audits and surveys 'suggest significant, continuing record quality problems.'

A 1984 audit of Illinois criminal history records, for example, found that 20 percent of the records had erroneous information and 50 percent were 'missing dispositions, a majority of which were available in local police records.'

The recent OTA report also cites a national survey conducted by Search Group, Inc., which found that many states had no information on the number of their records including disposition information. But of those that had information, the number of records with disposition information was estimated to be about 50 percent."

The NRA believes very strongly in the presumption of innocence; thus, we believe that a criminal charge which has not resulted in a conviction does not make a potential handgun transferee ineligible to receive or possess a handgun. Yet the absence of complete and accurate criminal history information, particularly disposition information, will undoubtedly result in the disapproval of handgun transfers to eligible transferees as a result of inaccurately recorded dispositions. Moreover, in the hands of a chief law enforcement officer looking for any excuse to prevent a handgun transfer or who believed that an arrest was sufficient evidence of guilt or who felt that an arrest must have led to a conviction for the same offense, inaccurate and incomplete records would provide a justification for disapproving a transfer. Until the system of records is made accurate, complete, reliable, and timely, no consideration should be given to legislation which rests upon such records since to do so flaunts the presumption of innocence.

Finally, we are concerned with the cost of implementing S.466.

In the first quarter of 1986, the III received almost 642,000 inquiries a month, a rate of 7.7. million inquiries a year. As there may be in excess of 6 million handgun transfers a year, it is clear that the burden on the III will be substantially increased. Not only will this probably necessitate additional expense by the FBI and the states — many of which have expressly rejected background checks and will certainly balk at paying for a program they opposed — it will certainly impede the use of the III by those in the criminal justice system dealing with violent crime, possibly putting at risk not only rank

and file law enforcement officers, but members of the public.

In addition to these objections, there are significant problems with some other provisions of the bill. There has been some concern that this measure would amount to de facto registration, as do all other waiting period schemes. The bill's backers have suggested that it would not because unless the sale is denied, law enforcement is required to destroy all records. But does BATF need to add local law enforcement offices to its inspection rounds? This is a significant question that must be explored.

The legislation raises 5th Amendment concerns as well, since the transferor is required to submit a "sworn" statement by the transferee to the local law enforcement chief. This statement includes "a statement that Federal law does not prohibit the receipt of the handgun by the transferee." Essentially, this requirement compels the transferor to evaluate the legal qualifications of the transferee or risk prosecution . . .

These issues merely compound the objections to waiting periods. Purely and simply, waiting periods begin the step-by-step process where the Second Amendment right to keep and bear arms becomes a privilege. Under the waiting period procedures, prospective gun owners are presumed to be guilty of crime until a police check into their background proves their innocence. Such a presumption is repugnant to Anglo-American jurisprudence.

S.466 and all waiting periods redirect police from crime fighting to the unrewarding task of snooping into the private lives of law-abiding citizens. Background checks invite serious violations of the right to privacy. Indeed, since most persons who seek psychiatric assistance are not legally institutionalized (like John Hinckley in 1980), a thorough background check would require the opening of hitherto private medical records to police.

These arguments are all valid on both the state and federal level. The current proposal elicits further objection on the grounds of federalism, local and state control of law enforcement resources, and states' rights. As Senator McClure pointed out in 1985:

> "I think the real rationale (behind a nationally-mandated waiting period proposal) is something more, simply to serve as an inconvenience to those of our States -- the majority incidentally -- which do not want such waiting periods. There is no basis to pretend that all the States in fact have the same problems or outlooks. In some areas, crime may be less or the need for prompt defense greater. Some of our States may find arguments unconvincing which others accept. Some may have more respect for individual rights than others. But these are not judgments we ought to overrule, least of all on the pretense that we are giving them a so-called opportunity. The main rationale for this amendment is the supposed opportunity for a background check. This is ridiculous since the amendment only provides such an opportunity to States, which do not want the opportunity and to their citizens who have voted it down."

Yet, there is no clear indication of just how the legislation is meant to treat states with some sort of waiting period or licensing system already in place. According to the material put out by HCI, the bill would not impose the federal waiting period if the state had either a waiting period of at least seven days or a background check before a handgun could be transferred. Yet the bill itself provides that a state law would not be in direct and positive conflict if it has a waiting period or a background check. This clearly means that both federal and state laws would co-exist and a dealer or private transferor would have to comply with both federal and state law.

The provision for acceptable state law -- "a waiting period of at least seven days before the transfer or a handgun" -- means that state law allowing "up to" a certain number of days -- with the potential for receipt of the firearm in less than seven days -- would not be acceptable. But, does the legislation also mean that state law must apply to both dealer and private transfers for any exemption to exist?

Ultimately, the NRA will oppose waiting period legislation introduced in this Congress no matter how craftily drafted. As the WALL STREET JOURNAL noted shortly after the murder of John Lennon: ". . . the sudden hue and cry for more gun control at such times is a kind of cop-out, the sort of cop-out that is part of the problem in America.

"The country knows that something is wrong. Too many are turning to crimes of violence. The notion that this can be changed by controlling guns, we worry, may be an excuse for avoiding the hard work of making our decrepit criminal justice system start to function, and the even harder work of buttressing what used to be called the nation's moral fiber."

I would like to take the time to address specifically some of the material distributed by proponents of S.466.

Many of you have, no doubt, recently received a letter from Handgun Control, Inc., containing numerous inaccuracies regarding H.R. 975, an identical House counterpart to S.466.

I would like to take this opportunity to correct a few of the more glaring misstatements in HCI's mailing.

Handgun Control, Inc., continues to perpetuate the myth that presidential assailant John Hinckley would have been stopped had a waiting period and background check been in place prior to his firearms purchase. We know what the facts are, as I have discussed earlier. Unless HCI is proposing the investigation of personal, and heretofore private, conversations with a psychiatrist or other medical personnel for the purposes of verifying mental stability, the waiting period would not have "stopped" Hinckley from going to Washington, D.C., as HCI continues to insist it would. HCI's continued reliance on its emotional rhetoric merely points up the complete lack of evidence to compel the passage of S.466.

Throughout its letter, HCI misuses the word "caught" in reference to individuals denied lawful access to a handgun, for example, in saying that Columbus, Georgia, police "catch" X number convicted criminals under their system, or that Hinckley would "have been in jail instead of on his way to Washington." Rejection under the system does not equate with indictment, conviction, or incarceration for violation of firearms laws. In fact, our contacts with law enforcement around the country confirm that individuals are

not prosecuted, much less imprisoned, for violations of restrictive gun laws detected by background checks.

HCI's reference to New Jersey is especially interesting, in so far as it makes a stronger case against institution of their scheme than for its implementation. You may remember receiving a similar packet of information last Congress during the Volkmer-McClure legislative debate. At that time, HCI alleged that New Jersey officials denied applications of "33,000 criminals." NRA-ILA and many others pointed out that, in fact, a majority of those rejections were not based on previous criminals records; that the system in question included applications for permits to carry a concealed firearm which are frequently denied solely because the issuing authority determines the "need" is insufficient; and that the system allowed denial based on the arbitrary and subjective standard that issuance would "not be in the interest of the public health, safety or welfare."

HCI has now apparently adopted a lower number of "rejections of criminals," by citing 10,000 in this year's mailing. Even were that number accurate, it would still indicate a system in which more than two-thirds of the rejections were for reasons unrelated to criminality. This is hardly evidence of an efficient system weeding out criminals while protecting the rights of the law-abiding. And in the face of data showing that the level of firearms-related violent crime in the state, and indeed the percentage of firearms involvement in violent crime, has been rapidly rising, relative to the U.S. as a whole, it is obvious that the sytem is not preventing the criminal acquisition of firearms.

HCI then claims that the Chief of Police in Columbus, Georgia, believes their waiting period system to be working. NRA-ILA staff has followed up on this assertion and has found that the officers responsible for the waiting period system in Columbus do not share the Chief's view, as reported by HCI. In fact, HCI and/or the Chief appear to expand the level of rejections by more than four-fold. And again, denial does not necessarily indicate prevention of criminal acquisition of a firearm, nor does it relate to

the level of violent crime in a community.

HCI also approvingly cites Memphis, Tennessee, and Atlanta, Georgia, as communities where restrictive gun laws are "working." They neglect to point out that those communities are two of the most crime-ridden within their respective states, and indeed within the South as a whole.

As in last year's mailing, HCI again presents Broward County, Florida, as a model for waiting period legislation. And, as in last year's NRA-ILA response, we point out that nearly half of those rejected in Broward were rejected for outstanding traffic warrants and similarly inapplicable causes. Additionally, handgun-related deaths in Broward, and especially suicides, rose after the imposition of a waiting period.

California's Attorney General may have been correct in his assessment of the effectiveness of their system in denying a constitutional right with frequency -- even though the number given represents less than 1/2% of the applicants -- but that assertion is unrelated to any crime reductive effect. It should be noted that the homicide rate in California increased 126% as the state increased the length of its waiting period from 48 hours to 5 days and to 15 days, even as the national rate rose by less than half as much.

HCI also misrepresents the Wright-Rossi felon study, conducted under a grant from the U.S. Department of Justice. That study found no difference in the methods of firearms acquisition by criminals regardless of the type of state "gun control" laws in place. Wright notes that criminals "obtain guns in hard-to-regulate sources . . . . Swaps, purchases, and trades among private parties (friends and family members) represent the dominant pattern of acquisition within the illicit firearms market." HCI would have us believe that these private networks would suddenly dry up, or that they would change their spots and participate in a law enforcement effort aimed at them.

Finally, it is instructive to note that waiting periods, police background checks, and permit-to-purchase systems have been in existence at the state and local level for most of this century. HCI alleges that these laws work, and they have examples in 23 states and dozens, if not hundreds, of cities and counties. Yet when called upon to produce

evidence of this efficacy, all that can be mustered are three states and four localities. And, upon further examination, even this scant "evidence" is found to be completely lacking in relevance at the least, or to be outright deceiving and distorted, if the truth be told.

Mr. Chairman, and members of the Subcommittee, I thank you once again for the opportunity to present the views of millions of NRA members on the legislation proposed here today, S.466. We can only hope that soon our anti-gun opponents will cease wasting the Congress' time on irrelevant, useless, costly, and unconstitutional measures such as this. The timely disposal of the current legislative proposal would free this Congress to address issues providing hope for real reductions in our nation's rate of violent crime, such as the streamlining of our criminal justice system and the imposition of swift and certain punishment for criminal offenders. Thank you.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

July 9, 1987

The Honorable Howard M. Metzenbaum
Subcommittee on Antitrust, Monopolies,
and Business Rights
Senate Judiciary Committee
Attn: Mary Louise Westmoreland
308 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Metzenbaum:

Thank you for your letter of 29 June 1987. I am happy to respond to Senator Hatch's questions, submitted through you.

1. Congressman Feighan misspoke regarding the position of some National Rifle Association officials, taken more than a decade ago, before the existence of the Institute for Legislative Action. NRA has never supported tying the hands of state legislatures and local police through the imposition of a nationally-mandated waiting period.

NRA's qualified support of some state-wide waiting period laws was based on a lack of criminological evidence confirming their inefficacy, on the naive belief that such systems would not be used to restrict the rights of the law-abiding, and in the face of threats concerning even more restrictive proposals.

Since that time, officials of the NRA and our nearly three million members have learned from criminological research proving that waiting periods are completely useless in addressing violent crime. Additionally, NRA members have had the unfortunate experience of learning first hand that such systems are used to restrict the rights of the law-abiding. Simply put, proponents of waiting periods in the early 1970s claimed they would deny firearms to criminals without affecting the ability of peaceful citizens to acquire firearms. NRA members learned that waiting period advocates had it backwards: waiting periods deny firearms to peaceful citizens without affecting the ability of criminals to acquire firearms.

2. Since 1985, no state has enacted a waiting period system. In fact, the only action at the state level on this issue has been the rejection of the schemes altogether, or the defeat of proposed increases in the length of existing waiting periods. Since 1985, six states have passed firearms preemption laws, the most recent being the Commonwealth of Virginia and the State of Florida. Each of those preemption statutes invalidated a number of waiting periods at the local level. Both were passed with substantial majorities and great popular support.

Although it is difficult to judge exactly why each state legislature has acted against the waiting period concept, it is possible that those legislatures merely judged the waiting period scheme on its dubious merits and found it lacking. It is also likely that state legislatures, faced with ever-shrinking law enforcement budgets, chose to discard a program requiring the expenditure of great sums in an effort to investigate the backgrounds of their law-abiding constituents.

3. As outlined in my testimony before the Subcommittee on the Constitution, there have been a number of studies conducted to test the effectiveness of the waiting period as a hindrance to criminal firearms acquisition. All of these studies are unanimous in their rejection of waiting periods as crime-fighting tools. Please see: Douglas R. Murray, "Handguns, Gun Control Laws and Firearms Violence," (1975); Matthew R. DeZee, "Gun Control Legislation: Impact and Ideology," (1983); Joseph P. Magaddino and Marshall H. Medoff, "An Empirical Analysis of Federal and State Firearms Control Laws," (1984); James D. Wright and Peter H. Rossi, The Armed Criminal in America: A Survey of Incarcerated Felons, (1985); and Gary Kleck, "Policy Lessons from Recent Gun Control Research," (1986). I have also enclosed a brochure, entitled "Gun Law Failures," containing discussion of these, and other studies concerning waiting period systems.

4. Any attempt at "improving" the system of record-keeping in preparation for imposition of a waiting period begs the question. NRA-ILA will oppose a waiting period with police background check even in a perfect world where inaccuracies have been eliminated. The proposed legislation would create a presumption that each and every American citizen is a convicted felon, narcotics addict, or other prohibited person. The proposal would set up a massive surveillance system in which those who exercise a constitutional right are subjected to police scrutiny. Neighbors, friends, and collectors could not trade handguns without informing the police first. Requiring a citizen to wait a week to purchase a handgun pending police approval is no different than prohibiting the citizen from buying a newspaper for a week or from joining a labor union for a week. Rampant inaccuracies in the system merely make a bad proposal worse.

5. In general, the surveys cited fail to include any questions regarding the effectiveness of further restrictive gun laws on crime rates or on the prevention of criminal access to firearms. In addition, there is no indicator from the results reported that questions were posed regarding the willingness of the public to finance expensive police background checks. When all the facts are presented to a legislatives body or to the public at large, the glaring weaknesses of the waiting period concept ensure its defeat in arenas where real policy choices are made.

6. Again, the only extant studies on the waiting period issue point up the failure of such systems to prevent criminal acquisition of firearms. At the most, a waiting period system is probably merely irrelevant to crime, violence, and fatalities associated with the misuse of firearms in a community -- with the notable exception of those deaths resulting from the inability of law-abiding citizens to acquire a firearms to meet criminal threats.

7. As an example of noncompliance with such provisions, Indiana law states that "no additional record of any lawful transfer of any firearm shall be made. . . ." All forms utlitized are required by law to be forwarded to the recipient of the handgun within six months of the transfer, with the exception of those forms retained by the transferor. The recipient of the pistol or revolver is to retain the forms as proof of ownership. Yet it is the policy of the police to return the forms to the recipient of the firearm only if he or she specifically makes a request at the expiration of the six months.

Thank you once again for the opportunity of presenting testimony at your June hearing, and for this additional opportunity to augment the record of those proceedings.

Sincerely,

James Jay Baker

James Jay Baker
Director
Government Affairs

Senator METZENBAUM. Thank you very much, Mr. Baker.

We will next hear from Mr. Richard Boyd, national president, Fraternal Order of Police.

When the police organizations speak, I would appreciate your advising us how many members you have.

STATEMENT OF RICHARD BOYD

Mr. BOYD. Thank you, Mr. Chairman, and members of this honorable Senate. I am Richard Boyd, national president of the Fraternal Order of Police. The Fraternal Order of Police is the Nation's largest law enforcement organization, with a membership of 179,000 members, and the Fraternal Order of Police supports the provisions of the Handgun Violence Prevention Act of 1987.

I submit to you as part of my testimony the authority under which I act. Resolution 21 of the 47th Biennial Conference of Baltimore, MD, on August 7, 1985, this resolution authorizes the Fraternal Order of Police president to encourage Congress to pass a 14-day waiting period for the purchase of handguns, as recommended by the Attorney General of the United States. This resolution was passed with no negative votes, at the hands of 2,215 law enforcement delegates who represent our order.

Mr. Chairman, the law enforcement officers of this Nation are solidly behind legislation aimed at handgun sanity: Therefore, any law enforcement representative who opposes S. 466 simply stands alone; and, sadly, any law enforcement representative who claims a large police membership jeopardizes the very lives of his members by a negative position on S. 466.

The Fraternal Order of Police also adds that you weigh carefully the position of any one issue special interest group which opposes S. 466, since they demonstrate on a daily basis a total disregard for the safety of our officers and the citizens of this country.

I must be candid with this committee: law enforcement officers of this Nation do not subscribe to a theory of an acceptable level of violence, a theory developed and advocated by organizations sitting at this table today. The Congress is obligated to accept their responsibility, which is both legislative and executive, to protect public employees in that employment.

If a 7-day waiting period would save just one life, Mr. Chairman, the life of one law enforcement officer or a citizen, then your work will be successful. Our prediction is that a cooling-off period will save hundreds of lives.

The only problem that we see at the enforcement level is that this legislation does not go far enough for our officers and our citizens. Possibly a 14- to 30-day waiting period would be more responsive to the problem, so we hope that a 7-day period is not simply an attempt to soothe the feathers of gun groups who are law enforcement's constant obstacle when securing preventive safety-type legislation in this Congress and in the State legislatures. Until Congress is willing to stand up to the negative influence of these "gun is god" advocates who operate outside a hunting or sport shooting scope of interest, then safety legislation will be limited.

Mr. Chairman, you can count on the Fraternal Order of Police to support any efforts of the U.S. Senate to save lives.

Thank you.

Senator METZENBAUM. Thank you. We are very happy to have you with us, Mr. Boyd, and appreciate your very supportive statement.

[Mr. Boyd's response to questions submitted by Senator Hatch follow:]

Honorable Howard Metzenbaum
United States Senator - Ohio
Washington, DC 20510

July 12, 1987

Dear Senator Metzenbaum,

I will be happy to answer Senator Hatch's questions as follows:

1 Formal research on the 'waiting period' question does not exist at this time; I do know that a plan for that research is in review and should be available by the end of this session of Congress. Twenty-two states have waiting periods, but regardless of what the figures might show, there is a need for national legislation for all gun laws so that the holes can be plugged and prevent movement of gun abusers from one state to another to avoid compliance with any particular state statute.

Some states have reported 'waiting period' statistics. For instance, reportees indicate that 1) criminals do apply for gun permits, 2) about 4% to 10% of the people applying are denied due to background checks, 3) that the percentage of use of firearms in the crimes of murder, robbery, and assault, are lower in states with strong handgun regulation and 'waiting periods' than the states which do not have such strong statutes, and 4) that many criminals have been caught trying to purchase legitimate guns and have been charged with falsification of official record. Specifically, New Jersey reports - "the experience in New Jersey has proven that a gun law, which includes the licensing and registration of handgun sales, etc. can produce favorable results in reducing crimes in which firearms are involved".

2 I totally reject the indication that there would be "serious problems with the accuracy records" under the proposed legislation especially considering the main thrust of the legislation is to eliminate "heat of passion" or "immediate criminal act" types of gun purchases. The law enforcement agency is under NO obligation to act on the request for background check. The reverse of your question is probably more accurate; law enforcement would like a longer period of time for a 'waiting period' so they can make the best use of a sophisticated records check systems which every state possesses. Local departments now know the importance of good records keeping systems and one would have to look very hard to find a department, regardless of size, which could not check its local records for violations. State and Federal violations would be on the computer. The error ratio of records checks would almost non-existent.

3 Denial of the purchase of a handgun would be appealable under normal provisions of the administrative rememdies covered under the act, plus the denied person has access to the courts if administrative appeal is fruitless.

4 The cost of the passage of any new statute is absorbed within the existing budgets of the local, state, and federal law enforcement agencies involved. Of course, all law enforcement agencies would like commensurate line item appropriation for enforcement, but when it is not received a priority system is used for enforcement until specific monies can be identifed. Administratively speaking, a local or state law enforcement agency could prioritize 'waiting period' applications and catch criminals, or deny access of handguns to those more prone to abuse. A crime priority in administration would cause a positive influence on crime statistics which, in turn, would justify the cost.

5 Again, the main thrust of the legislation is to save the lives and property of those citizens who may be the victims of handgun violence. Just to save those lives, lives snuffed out in the heat of passion, by suicide, or by criminal abuse of recently purchased handguns, would justify this legislation. Secondary benefits of the legislation is to deny sale to those people who are identified under the statute as potential abusers of handguns. While no one can control the action of the law enforcement agency to act on the applications sent to them, it is certainly the intent of all police agencies to enforce crime and reduce handgun injury. We predict that the agencies who refuse to act will be very minimal.

6 The proposal of the Fraternal Order of Police for a 14 day waiting period follows the recommendations of the Attorney General of the United States. That resolution will be updated to allow flexibility in the passage of 'waiting period' legislation. I, personally, feel that the waiting period of seven days should be longer. It appears that S.466 goes a long way to accomodate those persons and groups who now oppose the legislation since it zeros in on 'passion' buying and not purchase by the legitimate applicants.

7 I am somewhat surprised that Senator Hatch does not already know what figures constitute the breakdown of the Fraternal Order of Police. The Fraternal Order of Police has 179,000 plus members on our computer in Louisville, Kentucky. This number fluctuates somewhat for reasons everyone can understand, but the overwhelming majority of our membership, 75% or so, are full-time, active, law enforcement officers of a local, county, state, and federal agencies. I must qualify that we have not specifically identifed those active, from those retired, so the figure may well be higher. One must have been an active law enforcement officer to be part of the Fraternal Order of Police.

Figures on our FOP Associates and Ladies Auxiliary are not included in the 179,000 figure. There are more than 100,000 Associates and Ladies Auxiliary.

Requirements for initial membership require that only "regularly appointed and full time law enforcement officers of the United States, or any state or political subdivision thereof" shall be eligible for membership in the Fraternal Order of Police.

Respectfully submitted to Senators Metzenbaum and Hatch, I am

Richard A Boyd

RICHARD A. BOYD, National President, Fraternal Order ofPolice

Senator METZENBAUM. Mr. Scully, representing the National Association of Police Organizations, tell us who and what that organization is.

STATEMENT OF ROBERT SCULLY

Mr. SCULLY. Thank you, Mr. Chairman. My name is Robert Scully, and I am the elected president of the National Association of Police Organizations. I represent some 60,000 members throughout this country. I am also the elected vice president of the Detroit Police Officers Association, and I am an active police officer in the city of Detroit.

I ask that my testimony be made part of the record. I do not plan on reading it into the record. You have had it for ample time to review and I would entertain any questions.

The comment that I would like to make from my organization's standpoint, Mr. Chairman, is at our last annual convention you were a guest speaker at the convention and you saw firsthand in San Diego the response that you received when you talked about a 7-day waiting period bill. It was unanimous at my convention, to the person attending that convention, with over 200 delegates, and those delegates representing over 200 police departments and they were the presidents of those police departments throughout this country, representing Los Angeles and San Diego and Dallas and Houston and St. Louis and Detroit and Cleveland and New York, the Utah Alliance of Police, and I can go on and on and on, were in support of the legislation that you are proposing at that time which came out to be S. 466.

This is a commonsense piece of legislation. We are not in any way attempting to take guns from the hands of law-abiding citizens. I encourage law-abiding citizens to have guns.

What we are encouraging is that this Senate, that this Congress pass legislation that would have continuity across this United States, from State to State, have the same law for the check of a handgun for the person who wants to buy a handgun; historically a problem we have had in Michigan, your neighboring State, where we have had good laws through the years on handguns, when a person gets turned down in Detroit, he just runs across the border and goes to Toledo. Finally, we encouraged the city of Toledo to pass a city ordinance which it has now passed and it is a very effective law down there. So now they have got to go outside of Toledo a little bit to get their handguns.

So I think that is a good example of the problem we have in the State of Michigan. I noticed in reading some of the testimony of the other speakers here today, they talk about polling members and being unanimous. You were at our convention and you saw firsthand.

I also happen to be a good friend of the president of the Toledo Police Patrolmen's Association, our sister city, whose name is Bill Dunn, and we communicate about once a month. I was asking Bill yesterday by telephone if in fact he supported his organization's viewpoint, and Bill's organization on a national level is Mr. Kleismet's organization, and Bill told me that he had never had any conversation on this legislation that is in front of us today, and

with that I would like to close my comments and open it up for any questions.

Thank you.

[The prepared statement of Mr. Scully follows:]

Testimony of

Robert Scully, President,
National Association of Police Organizations

Before the Senate Subcommittee on the Constitution

June 16, 1987

My name is Robert Scully. I serve as President of the National Association of Police Organizations, (NAPO), which represents more than 60,000 working and retired police officers throughout the United States. I am a working police officer on leave from the City of Detroit Police Department. I also serve as Vice President of the Detroit Police Officers Association.

On February 4, 1987, when S. 466 was introduced, Legislative Counsel for the National Association of Police Organization participated in its public announcement and expressed NAPO's support. Today, as NAPO's President, I am pleased to appear before this Subcommittee to reaffirm NAPO's commitment to the passage of this most-needed legislation.

The necessity for the enactment of this bill is self-evident. The sale of handguns to convicted criminals, drug abusers, the mentally deranged and incompetent, and others who must not be allowed to purchase guns, is a national problem of mounting proportions.

The annual national fatality rate of over 20,000 through the misuse of handguns, including many police officers, and the countless non-fatal injuries these weapons cause make prompt congressional action imperative.

Wherever such waiting-period laws have been adopted on a state level, they have proven themselves extremely effective in preventing handgun violence. For example, according to the office of the Attorney General of California, in 1981, 1,200 would-be purchasers of handguns were prevented from buying weapons by reason of that state's 15-day waiting period law. But not all states have such laws. So, for example, 90% of all handguns used for crimes committed in New York State, which has strong gun control laws, are purchased outside of New York. The need for national legislation covering this gap in state law will help to establish national uniformity, and will succeed in eliminating "forum-shopping" by criminals in connection with handgun purchases.

Under S. 466, all sellers of handguns will be obligated to notify the local police of a proposed sale in order that they may check out the purchaser. If the seller receives no notice from the police within seven days, the sale may go through.

Aside from keeping criminals from obtaining handguns, the measure would also serve to impose a "cooling-off" period on those who would be entitled to buy a handgun, but who seek a weapon in the heat of passion, or in the midst of domestic strife, or while experiencing extreme depression and homicidal impulses. The opportunity to reconsider violent intentions, which would clearly flow from a seven-day waiting period, seems socially desirable and would have no discernible "down-side."

NAPO is firmly of the view that this bill is an urgently needed measure designed to protect the public. It would give local police departments the opportunity to determine the qualifications of potential gun purchasers, and it would help in assuring that those who are not entitled to buy handguns are prevented from obtaining them.

I thank you for your kind patience and attention.

Senator METZENBAUM. Thank you very much, Mr. Scully. I do remember very well and favorably the warmth of the reception that I received and when I addressed myself to issues just such as those that we are talking about here today and how totally supportive your police officers were. I appreciated their warmth and hospitality as well as their approval of the legislative activities of this Senator.

Mr. Kliesmet, the President of the International Union of Police Associations, would you tell us about your organization, sir?

STATEMENT OF ROBERT KLIESMET

Mr. KLIESMET. My name is Robert B. Kliesmet, and I am the president of the International Union of Police Associations, AFL-CIO, the largest rank and file police union in the country.

I am appearing here today to voice my union's——

Senator METZENBAUM. How many members do you have, sir?

Mr. KLIESMET. 20,000 members.

Senator METZENBAUM. Why do you say the largest police organization, since the FOP say they have 179,000, Mr. Scully says they have 60,000, you say you have 20,000? I am curious as to why you say that.

Mr. KLIESMET. We are a labor organization, not a fraternal group. We are not a management run group, although we do have management locals who comprise our membership. We are a real trade union.

Senator METZENBAUM. I see, so you make a distinction that they are more of a fraternal group, they speak for police officers, you speak for police officers, you both do that, is that right?

Mr. KLIESMET. Correct.

Senator METZENBAUM. And would you tell us, as Mr. Scully has told us also, in your remarks whether or not your organization has taken official action on this, because he indicates that the organization does not have an official position on this?

Mr. KLIESMET. Well, I received in this morning's mail an overnight letter from the Toledo Police Patrolmen's Association and, for the record, I would like to read it. When I get back to my office, I will forward a copy of this to this committee for the record. It is addressed to me:

> It is our understanding that you will be offering testimony in opposition to S. 466, which in brief provides for a waiting period of 7 days to obtain a handgun. It is also our understanding that Akron, Ohio IUPA Local 16 AFL-CIO will give testimony in favor of S. 466. While Local 16, whose membership in the International Union of Police Associations, AFL-CIO, is in question, may support S. 466, they do not speak for the Toledo Police Patrolmen's Association IUPA Local 10 AFL-CIO. Area Representative Michael Antell, who is from Napoleon, Ohio, or Regional Director Sam Cabrel, Defiance Ohio, who in fact oppose S. 466.
>
> Further, I call your attention to the IUPA's position recontrol—see enclosure, and I will talk about that shortly-this was a voted resolution at our 1986 International Convention in Long Beach, California, which opposes gun control of this nature. I trust, as does our area representative and regional director, that your testimony will reflect the edict of our majority locals.
>
> Fraternally, William A. Dunn, President, Toledo Police Patrolmen's Association.

Senator METZENBAUM. This is a minor inquiry: Did the action of the convention in 1986 specifically address itself to the matter of the 7-day waiting period or just the issue of gun control?

Mr. KLIESMET. Well, in the page and a half of the resolution, the resolve that the International Union of Police Associations IUPA, AFL–CIO, opposes gun control legislation.

Senator METZENBAUM. That is a different issue. We are not talking about gun control, we are talking about a 7-day delay. You go ahead, Mr. Kliesmet, I do not want to impose upon your time. We are happy to have you with us.

Mr. KLIESMET. Well, if you will permit me discussion, we randomly polled through the mails 11,300 of our members, about 75 percent of the respondents, slightly more than 35 percent, did take the time to respond, supported our position. This is not a delegate authorized convention environment that we made this decision, we did it for very sound reason and hopefully my testimony will bring that out.

Senator METZENBAUM. You are saying supported your position against gun control?

Mr. KLIESMET. We are against the 7-day waiting period. In this issue, we are against the total concept of any kind of legislation which could be categorized as gun control.

Senator METZENBAUM. That was on a poll?

Mr. KLIESMET. No, the poll that we did take, which was the reason for the formulation of this resolution, was on the Volkmer-McClure Act——

Senator METZENBAUM. On the what?

Mr. KLIESMET. The Volkmer-McClure Act.

Senator METZENBAUM. Well, I do not think I want the record to be confused.

Mr. KLIESMET. I am not confusing the record.

Senator METZENBAUM. Volkmer-McClure was a bill, it was amended much and now it passed into law. Then you have this bill having to do with the 7-day waiting period. You have the general subject of gun control, you have plastic guns, you have machine guns, and I just want to be certain that the action that your organization took, because there does seem to be some question—I think Mr. McGlumphy is going to question whether or not you speak for the organization—and I am trying to clarify whether or not a poll was taken on the issue of a 7-day or 14-day waiting period to buy a gun.

Mr. KLIESMET. Not a membership poll, no, sir.

Senator METZENBAUM. Not a membership poll?

Mr. KLIESMET. No, sir.

Senator METZENBAUM. Well, what kind of poll was taken?

Mr. KLIESMET. A poll of executive board members.

Senator METZENBAUM. And how was that taken, by mail?

Mr. KLIESMET. By phone.

Senator METZENBAUM. By phone. Nothing written?

Mr. KLIESMET. Not on this issue, no.

Senator METZENBAUM. What was the question asked of them?

Mr. KLIESMET. Would you be in favor of the IUPA opposing S. 466, which requires a 7-day waiting period?

Senator METZENBAUM. And you took the poll?

Mr. KLIESMET. My staff member did, our research department did.

Senator METZENBAUM. All right. Mr. Kliesmet, I imposed upon your time with my questions, so why do you not take 2 or 3 minutes more.

Mr. KLIESMET. As many of the members of this committee should be aware, local law enforcement agencies are unable to effectively carry out the myriad of functions currently assigned to them by local and State laws. This phenomena is largely due to many departments being understaffed because of budgetary restraints. As a result of these budgetary cutbacks, there are less and less law enforcement officers available for our crime fighting mission.

Recent studies accomplished by various criminal justice academics and researchers have shown that the public perception of crime fighting activities of this Nation's law enforcement agencies is less than desirable. Yet, most people want and justly demand more police protection.

As an example, a neighborhood beat patrol in the city of Flint, MI, has twice won in a referendum which permitted a tax millage increase. The second time the tax increase won, the referendum specifically indicated that the money raised must be used for neighborhood beat patrol program which voters indicated helped reduce their fear of crime.

S. 466 would further burden local law enforcement agencies by imposing another nonessential duty on local law enforcement agencies, without providing the necessary funding. Thus, S. 466 will only serve to divert more law enforcement resources away from combating serious crime and reducing citizens' fear of crime.

As law enforcement professionals, experience has taught us that the vast majority of firearms used by criminals to commit crimes of violence are not acquired from legitimate, commercial sources. Moreover, as rank and file law enforcement officers, we know that criminals are not concerned with gun control laws, thus they invariably obtain firearms from noncommercial, nonlegitimate sources, the very sources not affected by S. 466.

There are two solid union-oriented reasons for our opposition to S. 466. First of all, S. 466 would require the use of police resources to do an investigation of potential firearm transferees. As an experienced police labor negotiator, it is difficult to request additional increases in benefits given to law enforcement officers from the already curtailed city and State budgets with the ever-escalating cost of living increases in this country. How do I rationalize to our members that it is in their best interest to support this measure, which would affect their ability to be able to compete for increases in this ever-spiraling economic environment.

The second well-founded reason for opposition to this measure comes in the fact that police unions such as the one I represent have taken on the role of defending its members in various liability-related litigation that is filed against them from time to time.

Senator METZENBAUM. If you would try to wind up.

Mr. KLIESMET. Well, there is case law presently on the books in Massachusetts Supreme Judicial Court, in *Irwin* v. *Town of Ware,* where an officer used his discretion to release a drunk driver who subsequently was involved in an accident which caused injury. The third party that was injured sued the police for failing to carry out their responsibility. If you extrapolate from that, you can see

where an agency which is overburdened with calls for services does not have the resources to do these background investigations, the law does not require that they be done, overlooks them, or in some cases makes an error—and police do make errors—and a person is injured as a result of either one of these two, they then sue the department or the officer, and can you imagine the amount of time, resources and financial resources of our union or the city that would be expended in defending our member?

Based on those two premises, we do not think that it is in our best interest to support this.

Thank you.

Senator METZENBAUM. Thank you, Mr. Kliesmet.

I want to say to you that there seems to be some question as to whether or not you speak for your membership, and I say that because it was only within the last 30 days that I received an award from your affiliate in Cleveland, OH, and they——

Mr. KLIESMET. They are not affiliated with us, Senator.

Senator METZENBAUM. Pardon?

Mr. KLIESMET. Cleveland does not belong to us, sir.

Senator METZENBAUM. They do not belong to you?

Mr. KLIESMET. No, sir.

Senator METZENBAUM. Well, we know that Mr. McGlumphy does belong to you.

Mr. KLIESMET. Well, since I got the letter this morning, sir, I called the Secretary-Treasurer's office to find out the status of Mr. McGlumphy. As of today, he is suspended for three reasons: No. 1, he has not paid his dues in a timely manner; No. 2, he has failed since the day that he affiliated to render a list of his members, which is required by our constitution and bylaws; and, No. 3, he only represents 38 or he is only paying dues or only owes dues on 38 of the 497 members of the Akron Police Department. So if he really is a trade union in Akron, he does not own the contract, he does not negotiate, he does not handle grievances, so therefore the whole question of whether or not he is an affiliate of the AFL-CIO is going to be resolved at our July convention.

Senator METZENBAUM. Mr. McGlumphy, you may be the only member of this great organization who was ever suspended on national television. [Laughter.]

Mr. KLIESMET. If Toledo had not brought this to our attention, I would have never checked it.

[Material submitted by Mr. Kliesmet follows:]

Statement of

ROBERT B. KLIESMET

PRESIDENT

My name is Robert B. Kliesmet and I am the President of the International Union of Police Associations, AFL-CIO, the largest rank and file police union in the country. I am appearing here today to voice my union's opposition to S. 466.

As many of the members of this committee should be aware, local law enforcement agencies are unable to effectively carry out the myriad of functions currently assigned to them by local and state laws. This phenomena is largely due to many departments being understaffed because of budgetary contraints. As a result of these budgetary cutbacks there are less and less law enforcement officers available for our crime fighting mission. Recent studies accomplished by various criminal justice academics and researchers have shown that the public perception of the crime fighting activities of this nation's law enforcement agencies is less than desirable. Yet, most people want and justly demand more police protection. As an example, a neighborhood beat patrol program in the city of Flint, Michigan, has twice won in a referendum vote which permitted a tax millage increase. The second time the tax increase won, the referendum specifically indicated that that money raised must be used for the neighborhood beat patrol program which voters indicated helped reduce their fear of crime. S. 466 would further burden local law enforcement agencies by imposing another non-essential duty on local law enforcement agencies without providing the necessary funding. Thus, S. 466 will only serve to divert more law enforcement resources away from combatting serious crime and reducing citizen's fear of crime.

As law enforcement professionals, experience has taught us that the vast majority of firearms used by criminals to commit crimes of violence are not acquired from legitimate, commercial sources. Moreover, as rank and file law enforcement officers we know that criminals are not concerned with gun control laws; thus they invariably obtain firearms from non-commercial, non-legitimate sources - the very sources not affected by S. 466.

There are two solid union-oriented reasons for our International's opposition to S. 466. First of all, S. 466 would require the use of police resources to do an investigation of potential firearms transferees. As an experienced police labor negotiator it is difficult to request additional increases in the benefits given to law enforcement officers from the already curtailed city and state budgets with the ever-escalating cost of living in this country. How do I rationalize to my members that it is in their interests to support this measure which would only

affect their ability to be able to compete for increases in this ever-spiraling economic environment?

The second well-founded reason for opposition to this measure comes in the fact that police unions such as the one I represent have taken on the role of defending its members in various liability-related litigation that is filed against them from time to time. A great deal of our dues resources go to representing our members in these types of actions. Requiring the submission of a sworn statement by a firearms purchaser to a local law enforcement agency places that agency and our members in an untenable position regarding civil liability.

As I hope this committee is aware, the Massachusetts Supreme Judicial Court, in Irwin v. Town of Ware, held that local law enforcement agencies, that our members comprise, are subject to the same kind of liability as private citizens when they act negligently. In that case a police officer of the Town of Ware had stopped an individual for driving while intoxicated and subsequently released him to drive home rather than arresting him. After that individual caused a serious accident in which a third party was injured, the injured person sued the Town of Ware successfully alleging the police department had acted negligently in releasing the intoxicated individual. Plainly, the principle established in this case could successfully be applied to a law enforcement agency which has been provided a sworn statement of a potential handgun transferee but which failed to investigate the transferee, or makes an error during the investigation, if the transferee subsequently misuses the handgun. We believe that the potential for this kind of litigation, not only because of the risk that damages might be awarded but also because of the time and expense which could be involved in defending such litigation, even if the local law enforcement officer was ultimately successful, strongly dictates against the passage of S. 466.

In closing let me reiterate a strongly held view of rank and file police officers concerning crimes committed with firearms. A very tiny percentage of the American population commits the vast majority of violent crimes. As a consequence what we need are not laws which would regulate the exercise of Constitutional rights by peaceful and honest citizens, but rather a serious committment to law enforcement that punishes crimes of violence. By failing to focus on that subject a great disservice is done to the American citizens. We are hopeful that this Committee will reject S. 466 and turn its attention to the real problems faced by law enforcement agencies, the reduction of the fear of crime among this nation's citizens.

I appreciate the opportunity to present the views of the International Union of Police Associations, AFL-CIO, and am ready to answer any questions.

INTERNATIONAL UNION OF POLICE ASSOCIATIONS AFL-CIO

THE ONLY UNION FOR LAW ENFORCEMENT OFFICERS

Robert B. Kliesmet
President

Al Angele
Secretary-Treasurer

☒ National Headquarters • 815 16th Street, N.W., #507 • Washington, D.C. 20006 • (202) 628-2740
☐ West Coast Regional Office • 224 E. Olive Ave., #301 • Burbank, Ca. 91502 • (818) 841-5426

RESOLUTION #4

GUN CONTROL

WHEREAS, Sixty million peaceful and honest Americans own and use firearms for sport, recreation and personal protection; and,

WHEREAS, The vast majority of Americans strongly support the right of private firearms ownership; and,

WHEREAS, Americans have the constitutional right to keep and bear arms pursuant to the Second Amendment to the United States Constitution and the constitutions of forty states; and,

WHEREAS, Surveys indicate that only 1% of Americans suggest that "gun control" is the best means to fight crime; and,

WHEREAS, Scientific studies demonstrate that there is no positive correlation between firearms ownership and crime and that the more than twenty thousand existing "gun control" laws have not been effective in reducing crime; and,

WHEREAS, The majority of criminals agree that a criminal who wants a firearm is going to get one no matter how much it costs and that "gun control" laws only affect law abiding Americans; and,

WHEREAS, The vast majority of citizens of this country can be trusted with firearms; and,

WHEREAS, "Gun control" laws are expensive and time-consuming to administer and enforce, diverting far too limited law enforcement, prosecutorial, judicial, and correctional resources from being used to combat violent crime; and,

WHEREAS, "Gun control" laws which, by their very nature, have nothing whatever to do with the criminal use of firearms, lead only to poor law enforcement and create the potential for civil liberties abuses, thereby diminishing the public image of the law enforcement agency charged with administering and enforcing the law; and,

WHEREAS, Without a favorable public image, rank and file police officers will not be able effectively to undertake their important work; and,

Senator METZENBAUM. Mr. McGlumphy, I am going to ask you to proceed.

Senator Specter is going to conduct the hearing while I go out for just about a minute. I will come back. Please excuse me. Please go forward.

Senator SPECTER. Mr. McGlumphy, we are up to you. You may proceed.

STATEMENT OF DARWIN McGLUMPHY

Mr. MCGLUMPHY. Thank you, Mr. Chairman, and thank you, Senator Metzenbaum and all distinguished guests. My name is Darwin McGlumphy, and I am president of the Akron Police Patrolmen's Association, Local 16, IUPA-AFL-CIO, a charter organization within the international.

I will not dispute Mr. Kleismet's claim that I may be behind in dues, because we pay our dues on a quarterly basis and our check was sent in probably I think 10 days ago and we pay it every quarter, so it may be 30 or 60 days behind. I hope I am not rejected in my membership because of that.

I am here for several reasons, not one to dispute anything with my international president, but since he did bring this subject up, I can state emphatically that our national organization which I am disturbed about did not poll the local organizations within the AFL in Ohio regarding S. 466.

I am also the vice president of the Ohio Union Patrolmen and what I should emphasize to you is that some of our organizations belong to the AFL and some do not. Our State organization does not require it. Our Ohio Union Patrolmen does represent some 12 to 15 locals in the State of Ohio, some are AFL affiliates and some are not. We leave that up to their discretion.

We had a convention in Cleveland on May 22, in which Senator Metzenbaum was invited to the State of Ohio, he did receive our award, our distinguished service award and that award was presented to him for supporting this legislation.

The union members and nonunion members, police officers I represent in the State of Ohio, which are nearly 3,000, do support S. 466. I in no way support legislation banning handguns or their purchase, but I am for keeping weapons out of the hands of the criminal element, the drug addicts and the mentally disturbed.

I can relate several instances, and I think everyone in the country is familiar with the Hinckley incident. I am a street officer. I have worked for 16 years on the streets. In 1986, just a few months ago, I was sad to come across a situation in which a math teacher at East High School, in Akron, OH—I had occasion to go to his house on two or three occasions, he did have a history of mental problems, on two occasions I took him to the hospital for psychiatric care. On the third occasion, I was sent to his house in 3 or 4 days, and when I found him at the house he had committed suicide. There was a note. There was also a box of bullets by his body and a pistol which was just purchased a few hours earlier at a gun store in Akron, OH.

As recent as June 11, 1987, I was dispatched to a call in Akron, approximately one block from our newspaper office, the Akron

Beacon Journal. A woman came into the Portage Mental Health Center, she had a long history of mental problems, she was suicidal. She had attempted that day to purchase a weapon at three different stores in the Akron area. The store owners did know her, they would not sell her a weapon. She went to a fourth store where she did in fact purchase a weapon and 50 full-metal jacketed bullets, she walked into the Portage Mental Health Center on June 11 and told the psychologist on duty that she was contemplating suicide, and when they questioned her about it, said, "Why would you do that? We don't think you will do that." She said, "Oh, yes, I will," and she pulled out the gun.

Luckily, the weapon was taken from her and there was no incident of violence that day. The 7-day cooling-off period may have averted that.

The incident last year with the school teacher in Akron, OH, who was one of the most respected and well-liked teachers in the school system. if he could have had a little help that day, maybe it would have helped him. I do not know, but if it would have helped, the bill far outweighs the factors where some of these other groups say that it will hurt.

The only opposition I seem to see about this bill is the fact that it is going to be burdensome upon the local police departments and police chiefs. I talk with numerous police chiefs and my own police chief in particular, and our chief in Akron, OH does not feel that this would be burdensome.

If you look at what the identification bureaus do in the local police departments now, records check——

Senator METZENBAUM. Can you sum up?

Mr. MCGLUMPHY. Yes, sir, in 1 minute.

Record checks are conducted by local police departments for the Federal agencies, for like the FBI, the Federal marshals, security outfits, military recruiters are able to come into the police departments and ask for record checks. It is just a daily operation of the police department to provide these record checks to all these other agencies. Therefore, I do not feel that processing an application and keeping it on file and later destroying it would be anything that could not be done.

Thank you.

Senator METZENBAUM. Thank you very much, Mr. McGlumphy.

I want to say to all the members of the panel that I actually would like to have the luxury of being able to ask each of you some questions, but we had more witnesses today than I really wanted to have. Some of my colleagues insisted that certain people be on the panels today, although they themselves are not present. Now I find myself having an appointment at 12 o'clock and I still have five witnesses yet to be heard from.

So I apologize to each of you for not being able to inquire of you orally. I will say to you that I may have some questions and other members of this committee may have some questions, but I am very grateful to you for your testimony and thank you so much for being with us.

Darrel Stephens, Executive Director, Police Executive Research Forum; Harry J. Gaab, on behalf of the International Association of Chiefs of Police, retired Chief and Executive Director of the

Pennsylvania Chiefs of Police Association, Landsdowne, PA; Neal Knox, Director, Firearms Coalition, Silver Spring, MD; John M. Snyder, Capitol Hill Director, the Citizens Committee for the Right to Keep and Bear Arms; and Craig Markva, Government Affairs Representative, Gun Owners of America, Springfield, VA.

Gentlemen, I am going to have to be very tight on time because if I hear each of you for 4 minutes I can make my appointment and if I do not I will not.

So I am going to hold you very strictly to 4 minutes and cut you off at that point. I apologize to you for doing that, but I do not have any alternative.

Mr. Darrel Stephens, executive director, Police Executive Research Forum. Would you be good enough to tell us, Mr. Stephens, what that organization is as you make your remarks.

Mr. STEPHENS. Yes, I will.

A PANEL CONSISTING OF DARREL STEPHENS, EXECUTIVE DIRECTOR, POLICE EXECUTIVE RESEARCH FORUM; HARRY J. GAAB, ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE; NEAL KNOX, FIREARMS COALITION, SILVER SPRING, MD; JOHN M. SNYDER, CAPITOL HILL DIRECTOR, THE CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS; AND CRAIG MARKVA, GOVERNMENT AFFAIRS REPRESENTATIVE, GUN OWNERS OF AMERICA

Mr. STEPHENS. Mr. Chairman, members of the subcommittee, ladies and gentlemen: I am pleased to have the opportunity to talk with you today on behalf of the members of the Police Executive Research Forum. As law enforcement executives from the Nation's largest jurisdictions, we have long been dedicated to debating and speaking out on matters that concern the safety of our officers and citizens they are sworn to protect. Our members serve over 25 percent of the country's population. They are all too familiar with the widespread violence and carnage related to the criminal use of handguns. I am here today to tell you that the Forum members do indeed support a waiting period for the purchase of handguns.

We commend Senator Metzenbaum and Congressman Feighan for introducing legislation that would provide for a waiting period before the purchase, transfer or delivery of a handgun. We share the concerns of cosponsoring Senators and Congressmen.

The concept of a waiting period, that time in which a law enforcement agency may conduct a cursory investigation to determine if an individual is prohibited from owning a handgun, is not new. Forum members have long recognized the utility of waiting periods. In 1985, the Forum urged the adoption of a national waiting period, as recommended by the 1981 Attorney General's Task Force on Violent Crime. The Forum also informed Congress of the urgent need for maintaining other strong Federal handgun laws, as well.

In order to accurately express the views of our membership, Forum members are periodically surveyed on issues of concern to the police community. In March of this year, we asked our members whether the Forum should support legislation that would impose a waiting period between purchase and receipt of a hand-

gun. There was unanimous agreement of those returning surveys that our organization should support such a measure. These results, coupled with conversations with other practitioners, indicate that our membership strongly favors efforts to establish a national waiting period.

We feel that S. 466 is a laudable attempt to address this need. It is particularly well-drafted in that it allows the chief law enforcement officer the option of conducting a record check. In addition, it provides a cooling off period that may deter crimes committed in the heat of the moment. In a time when young adult suicide rates are on the rise and handgun violence continues to escalate, it is crucial that we support efforts to thwart these tragedies.

The Forum president, Chief Neil Behan, of the Baltimore County Police Department, could not be here today. But I would like to tell you a story about a resident in his jurisdiction. It serves as an example of the significance and the utility of a waiting period. An older gentleman walked into a gun shop and filled out an application for a handgun. He indicated on the form that he was not prohibited from purchasing a gun, having no prior felony record or history of institutionalization for mental illness. The dealer, in accordance with Maryland law, forwarded the application to the Maryland State Police, the agency responsible for conducting background checks for Baltimore County.

According to Maryland State law, no person may purchase a handgun if they have been convicted of a State felony. If it had not been for the waiting period and record check, a gun may have been issued to this man—a man who was sentenced to 3 years for committing a felony offense—a man also convicted of five additional crimes that are prohibitive under title 18 of the United States Code.

I think it is clear that individuals of this type cannot be trusted to provide honest information on a gun application. A waiting period does indeed work. It makes it more difficult for those with a history of instability and criminal activity to obtain a weapon. I understand that a waiting period is somewhat inconvenient for law-abiding citizens. I do not, however, feel that a delay in receiving a handgun is so burdensome as to outweigh the threat to the police and the community posed by an individual who obtains a weapon in a moment of emotional upheaval or criminal intent. This inconvenience is lessened by the fact that the legislation exempts an individual who receives a waiver from a law enforcement agency because his or her life is threatened.

Senator METZENBAUM. Your entire statement will be included in the record, Mr. Stephens. I am going to have to cut off others, and I want to be certain that I am fair to everybody.

Mr. STEPHENS. OK. Thank you.

Senator METZENBAUM. Thank you very much. We appreciate your supportive statement.

[The prepared statement of Mr. Stephens follows:]

PREPARED STATEMENT OF DARREL W. STEPHENS

Mr. Chairman, Members of the Subcommittee, Ladies and Gentlemen: I am pleased to have the opportunity to talk with you today on behalf of the members of the Police Executive Research Forum. As law enforcement executives from the nation's largest jurisdictions, we have long been dedicated to debating and speaking out on matters that concern the safety of our officers and the citizens they are sworn to protect. Our members serve over 25% of the country's population. They are all too familiar with the widespread violence and carnage related to the criminal use of handguns. I am here today to tell you that Forum members do, indeed, support a waiting period for the purchase of handguns.

We commend Senator Metzenbaum and Congressman Feighan for introducing legislation that would provide for a waiting period before the purchase, transfer or delivery of a handgun. We share the concerns of cosponsoring Senators Chafee, Dodd, Kassebaum, Kennedy, Kerry, Mikulski, and Moynihan that something more must be done to keep handguns out of the wrong hands.

The concept of a waiting period, that time in which a law enforcement agency may conduct a cursory investigation to determine if an individual is prohibited from owning a handgun, is not new. Forum members have long recognized the utility of waiting periods. In 1985, the Forum urged the adoption of a national waiting period, as recommended by the 1981 Attorney General's Task Force on Violent Crime. The Forum also informed Congress of the urgent need for maintaining other strong federal handgun laws, as well.

In order to accurately express the views of our membership, Forum members are periodically surveyed on issues of concern to the police community. In March of this year, we asked our members whether the Forum should support legislation that would impose a waiting period between purchase and receipt of a handgun. There was unanimous agreement of those returning surveys that our organization should support such a measure. These results, coupled with conversations with other practitioners, indicate that our membership strongly favors efforts to establish a national waiting period.

We feel that S. 466 is a laudable attempt to address this need. It is particularly well drafted in that it allows the chief law enforcement officer the option of conducting a record check. In addition, it provides a "cooling off" period that may deter crimes committed in the heat of the moment. In a time when young adult suicide rates are on the rise, and handgun violence continues to escalate, it is crucial that we support efforts to thwart these tragedies.

The Forum President, Chief Neil Behan of the Baltimore County Police Department, could not be here today. But, I would like to tell you a story about a resident in his jurisdiction. It serves as an example of the significance and utility of a waiting period. An older gentleman walked into a gun shop and filled out an application for a handgun. He indicated on the form that he was not prohibited from purchasing a gun, having no prior felony record or history of institutionalization for mental illness. The dealer, in accordance with Maryland law, forwarded the application to the Maryland State Police -- the agency responsible

for conducting background checks for Baltimore County. According to Maryland State Law, no person may purchase a handgun if they have been convicted of a state felony. If it had not been for the waiting period and record check, a gun may have been issued to this man -- a man who was sentenced to three years for committing a felony offense -- a man also convicted of five additional crimes that are prohibitive under Title 18 of the United States Code. I think it is clear that individuals of this type cannot be trusted to provide honest information on a gun application. A waiting period works! It makes it more difficult for those with a history of instability and criminal activity to obtain a weapon. I understand that a waiting period is somewhat inconvenient for law-abiding citizens. I do not, however, feel that a delay in receiving a handgun is so burdensome as to outweigh the threat to the police and the community posed by an individual who obtains a weapon in a moment of emotional upheaval or criminal intent. This inconvenience is lessened by the fact that the legislation exempts an individual who receives a waiver from a law enforcement agency because his or her life is threatened.

I would like to take this opportunity to address some of the arguments raised by opponents to this legislation. First, they claim that valuable law enforcement resources will be diverted to conduct background checks on handgun applicants. As I mentioned earlier, under this legislation, the chief law enforcement executive can decide whether or not to conduct a background check during the waiting period. He also has the discretion to determine what procedure would be best suited to his agency. This role is not unprecedented as chiefs currently have the option of conducting a check for the applicants of Title II weapons. While it is true there are

some associated costs, I believe they are justified when compared to the devastation caused by violent crimes, the cost to society, and the expense of police resources allocated to crimes that have already been committed. We in law enforcement have only recently broken from our traditional reactive role to become more proactive in our thinking. Forum members continue to encourage progressive policing practices, which include the establishment of measures to prevent citizens from becoming victims. I believe that local police will utilize the time provided by a waiting period to disrupt, to an appreciable degree, the flow of handguns to the criminal community.

There has also been some concern expressed regarding the use of these applications by the police as a means for maintaining a registry of firearms. This legislation, in fact, provides for the destruction of these documents. Forum members are not "anti-gun" and see no reason why these applications should or would be saved. The legislation appropriately provides that law enforcement agencies will dispose of records after 60 days if the purchase or transfer is not prohibited.

Further, some have argued that this is not going to keep criminals from obtaining handguns and that a "cooling off" period does not guarantee that suicides and crimes "of passion" will be preempted. I agree. While it is true that a waiting period is no panacea for handgun-related violence; it is a step in the right direction. When combined with tougher sentencing and other remedies, it can be an effective avenue for preventing some of the handgun deaths and accidents that police face on a daily basis. How ludicrous it is to argue that because a measure is less than a complete cure, it is useless to employ. Law enforcement does what it can to protect and serve its communities. We don't eliminate drunk driving checkpoints simply because they

don't deter everyone from drinking and driving. It is our hope that the adoption of a national waiting period would result in the reduction of handgun sales and transfers to individuals who are prohibited from possessing a firearm.

In 1985, handguns were the cause of 75% of all police officer deaths. Sadly, the numbers of those we remember during police memorial week grows each year. And what can we offer the survivors and friends of these law enforcement officers? We offer families a modest death benefit payment and sincere condolences for those who have suffered the loss of a loved one. It is time we did more to assure them and the multitude of citizens who have been victimized, or fear becoming victims, that steps are being taken to prevent similar tragedies. We have an opportunity to keep those who are deemed to be of danger to our society or themselves from gaining easy access to handguns. This is an opportunity we should grasp.

The law enforcement executives who comprise the Police Executive Research Forum strongly support the adoption of a national waiting period. We appreciate having the opportunity to share our concerns with you today. And, I would be happy to answer any questions you might have.

Senator METZENBAUM. Mr. Gaab, on behalf of the International Association of Chiefs of Police.

STATEMENT OF HARRY GAAB

Mr. GAAB. Good morning, Senator. I am Harry Gaab, retired chief of police of Lansdowne, PA, and executive director of the Pennsylvania Chiefs of Police. I am pleased to be here today on behalf of the president, Robert Landon, and executive director, Jerry Vaughn, of the International Association of Chiefs of Police.

The IACP was created in 1893 to facilitate the exchange of information among police administrators to promote the highest possible standards of conduct within the police profession. Our membership has grown to include 14,000 members, and they are law enforcement executives across the United States and 67 foreign nations. We represent the executives of police departments totaling 480,000 officers at the Federal, State, and municipal levels of government.

Throughout its history, the IACP has involved itself in issues that advance the welfare and well-being of citizens our members are sworn to protect. We have just such an issue here today. We would like to commend you, Senator, for introducing legislation that will require a reasonable waiting period to be observed before a handgun may be purchased. The IACP membership has long supported a waiting period for handgun purchases. In 1981, the IACP officially adopted this position by resolution.

I personally feel that the bill does not really go far enough. I feel that the bill should include all firearms, and I mention that because in 1981, on August 26, we had a young lady in our community walk into a half-way house. She had been recently discharged from a mental institution. She sat and waited and then quietly got up and walked over behind a typist and drove a knife in her back. We know that in the next couple of years she tried at least three times to buy a firearm after being again released from a mental institution.

On October 29, 1985, she was successful. She went into a department store and she bought a .22 caliber semiautomatic rifle. The following day, she went to the Springfield Mall, a very busy shopping center in suburban Philadelphia, and she shot 10 people with this .22 caliber rifle. She killed a 2-year-old, a 60-year-old man, and a doctor.

We wish to be very clear that the IACP does not consider this issue here today, your legislation, a handgun control bill. We do not consider this to be handgun control legislation. We in IACP support the right of all Americans to keep and have arms, and we support the legitimate sporting, recreational, law enforcement and private security uses of firearms. However, we realize that crimes committed by individuals using handguns are one of the most serious problems of violence facing our Nation today. We must do whatever we can to help alleviate this situation. It is my personal experience that adoption of waiting periods helps eliminate senseless violence perpetrated by firearms.

As a uniformed officer myself back in 1961, I was shot by a husband with a .12 gauge shotgun during a domestic dispute. The wait-

ing period would not have saved me that day, but a waiting period now could save other officers and it could save some of our citizens.

We do not think anyone here would dispute that there are certain people who simply should not be allowed to buy guns-convicted criminals, mental incompetents, drug abusers, et cetera. Last year, Congress acted to tighten up the language that disqualifies such persons from buying firearms. But such laws are meaningless if we merely take the word of the purchaser that he is eligible to purchase a firearm without giving the seller time to check out the information. Remember the lady, Sylvia, that I mentioned before.

Senator METZENBAUM. Thank you very much, Mr. Gaab. Had you finished? If you have one sentence to wind up, I have no problem.

Mr. GAAB. Basically, I commend you again, Senator, and I hope that Congress will pass this. I will speak to Senator Specter and ask if he will not amend it and include all firearms.

Thank you.

[The prepared statement of Mr. Gaab follows:]

EXECUTIVE SUMMARY OF TESTIMONY

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

CHIEF HARRY J. GAAB

LANSDOWNE PENNSYLVANIA, RET.

EXECUTIVE DIRECTOR

PENNSYLVANIA CHIEFS OF POLICE ASSOCIATION

1. The IACP membership has long supported a waiting period for handgun purchases. In 1981, the Association officially adopted this position by resolution.

2. The issue here is not handgun control. We at IACP support the right of all Americans to keep and have arms and we support the legitimate sporting, recreational, law enforcement and private security uses of firearms.

3. Waiting period bills give law enforcement a chance to check the backgrounds of persons before they are allowed to purchase a handgun.

4. A waiting period serves as a cooling down period in which a person who tries to purchase a gun during the heat of anger has time to calm down and rethink what he intended to do with the gun.

GOOD MORNING LADIES AND GENTLEMEN. I AM HARRY J. GAAB, EXECUTIVE DIRECTOR OF THE PENNSYLVANIA CHIEFS OF POLICE ASSOCIATION. I AM FROM LANSDOWNE, PENNSYLVANIA, AND I AM A RETIRED CHIEF OF POLICE. I AM VERY PLEASED TO BE HERE TODAY ON BEHALF OF PRESIDENT ROBERT W. LANDON AND EXECUTIVE DIRECTOR JERALD R. VAUGHN OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE. THE IACP WAS CREATED IN 1893 TO FACILITATE THE EXCHANGE OF INFORMATION AMONG POLICE ADMINISTRATORS TO PROMOTE THE HIGHEST POSSIBLE STANDARDS OF CONDUCT WITHIN THE POLICE PROFESSION. OUR MEMBERSHIP HAS GROWN TO INCLUDE 14,000 POLICE CHIEFS AND OTHER LAW ENFORCEMENT EXECUTIVES FROM ACROSS THE UNITED STATES AND 67 NATIONS THROUGHOUT THE WORLD. IACP MEMBERS LEAD AND MANAGE MORE THAN 480,000 OFFICERS AT THE FEDERAL, STATE, AND MUNICIPAL LEVELS OF GOVERNMENT.

THROUGHOUT ITS HISTORY, THE ASSOCIATION HAS INVOLVED ITSELF IN ISSUES THAT ADVANCE THE WELFARE AND WELL-BEING OF THE CITIZENS OUR MEMBERS ARE SWORN TO PROTECT. WE HAVE JUST SUCH AN ISSUE BEFORE US TODAY. WE WOULD LIKE TO COMMEND SENATOR METZENBAUM FOR INTRODUCING LEGISLATION THAT WILL REQUIRE A REASONABLE WAITING PERIOD TO BE OBSERVED BEFORE A HANDGUN MAY BE PURCHASED. THE IACP MEMBERSHIP HAS LONG SUPPORTED A WAITING PERIOD FOR HANDGUN PURCHASES. IN 1981, THE IACP OFFICIALLY ADOPTED THIS POSITION BY RESOLUTION.

WE WISH TO BE VERY CLEAR THAT WE DO NOT CONSIDER THE ISSUE HERE TO BE HANDGUN CONTROL, NOR DO WE CONSIDER THIS BILL TO BE HANDGUN CONTROL LEGISLATION. WE AT IACP SUPPORT THE RIGHT OF ALL AMERICANS TO KEEP AND HAVE ARMS, AND WE SUPPORT THE LEGITIMATE SPORTING, RECREATIONAL, LAW ENFORCEMENT AND PRIVATE SECURITY USES OF FIREARMS. HOWEVER, WE REALIZE THAT CRIMES COMMITTED BY INDIVIDUALS USING HANDGUNS ARE ONE OF THE MOST SERIOUS PROBLEMS OF VIOLENCE FACING OUR NATION TODAY. WE MUST DO WHATEVER WE CAN TO HELP ALLEVIATE THIS SITUATION. IT IS OUR EXPERIENCE THAT THE ADOPTION OF WAITING PERIODS HELPS ELIMINATE SENSELESS VIOLENCE PERPETRATED BY FIREARMS.

WE DON'T THINK ANYONE HERE WOULD DISPUTE THAT THERE ARE CERTAIN PEOPLE WHO SIMPLY SHOULD NOT BE ALLOWED TO BUY GUNS -- CONVICTED CRIMINALS, MENTAL INCOMPETENTS, DRUG ABUSERS, ETC. LAST YEAR, CONGRESS ACTED TO TIGHTEN UP THE LANGUAGE THAT DISQUALIFIES SUCH PERSONS FROM BUYING FIREARMS. BUT SUCH LAWS ARE MEANINGLESS IF WE MERELY TAKE THE WORD OF THE PURCHASER THAT HE IS ELIGIBLE TO PURCHASE A FIREARM WITHOUT GIVING THE SELLER TIME TO CHECK OUT THE INFORMATION SUPPLIED. WE ARE NOT SO NAIVE AS TO BELIEVE THAT WE CAN KEEP GUNS OUT OF EVERY DANGEROUS OR CRIMINAL HAND, BUT WE CAN KEEP THEM OUT OF SOME.

WE AT IACP HAVE HEARD MAINLY TWO CRITICISMS OF THIS KIND OF LEGISLATION: 1) THESE BILLS DON'T WORK; AND 2) THIS IS JUST THE BEGINNING OF MORE PERVASIVE AND INTRUSIVE GUN CONTROL LEGISLATION. WE DON'T THINK EITHER ONE OF THESE ARGUMENTS IS TRUE.

FIRSTLY, OF COURSE THESE BILLS WORK. THEY GIVE LAW ENFORCEMENT A CHANCE TO CHECK THE BACKGROUNDS OF PERSONS BEFORE THEY ARE ALLOWED TO PURCHASE A HANDGUN. AND WHEN WE CHECK THE BACKGROUNDS OF PERSONS WANTING TO PURCHASE HANDGUNS, WE SOMETIMES FIND OUT STARTLING THINGS:

*IN THE 19 YEARS THAT NEW JERSEY HAS REQUIRED A BACKGROUND CHECK FOR HANDGUN PURCHASES, 10,000 CONVICTED FELONS HAVE BEEN CAUGHT TRYING TO BUY HANDGUNS, ACCORDING TO THE SUPERINTENDENT OF THE NEW JERSEY STATE POLICE.

* THE CHIEF OF POLICE IN COLUMBUS, GEORGIA, SAYS THAT THE CITY'S THREE-DAY WAITING PERIOD CATCHES TWO FELONS A WEEK TRYING TO BUY HANDGUNS.

*A MEMPHIS, TENNESSEE POLICE SERGEANT REPORTS THAT THE STATE'S 15-DAY WAITING PERIOD SCREENS OUT ABOUT 50 APPLICANTS A MONTH, MOST OF WHOM HAVE CRIMINAL RECORDS.

*THE CALIFORNIA ATTORNEY GENERAL'S OFFICE SAYS THAT THE STATE'S 15' DAY WAITING PERIOD CAUGHT 1,200 PROHIBITED HANDGUN BUYERS IN ONE YEAR ALONE.

*IN MARYLAND, THE STATE POLICE REPORT THAT EVERY YEAR HUNDREDS OF INDIVIDUALS WITH CRIMINAL RECORDS ARE CAUGHT ATTEMPTING TO PURCHASE HANDGUNS THROUGH GUN DEALERS.

THE EVIDENCE SEEMS VERY CLEAR TO US THAT THIS TYPE OF BILL WORKS AND GIVES US ANOTHER TOOL TO PROTECT AND PROMOTE PUBLIC SAFETY.

CONCERNING THE SECOND ARGUMENT AGAINST THIS TYPE OF BILL, WE AT IACP DO NOT THINK THAT THIS IS THE BEGINNING OF MORE PERVASIVE HANDGUN CONTROL LEGISLATION. THIS TYPE OF BILL ONLY HURTS THE CRIMINAL - AND OTHERS WHO ARE PROHIBITED BY LAW FROM CARRYING HANDGUNS. AS I HAVE SAID, IACP SUPPORTS THE RIGHT OF ALL AMERICANS TO KEEP AND HAVE ARMS, AND THE LEGITIMATE SPORTING, RECREATIONAL, LAW ENFORCEMENT AND PRIVATE SECURITY USES OF FIREARMS. WE DO NOT THINK THAT THE MAJORITY OF AMERICANS WILL STAND BY AND WATCH THE CONSTITUTIONAL RIGHT TO KEEP AND HAVE GUNS DISMANTLED. BUT THE CONSTITUTION DOES NOT SAY THAT YOU HAVE THE RIGHT TO KEEP AND HAVE GUNS IMMEDIATELY. A SEVEN DAY WAITING PERIOD DOES NOT INFRINGE ON OUR CONSTITUTIONAL RIGHTS.

ALTHOUGH THE METZENBAUM BILL AS INTRODUCED WILL GIVE LOCAL LAW ENFORCEMENT AUTHORITIES DISCRETION AS TO WHETHER TO CONDUCT A BACKGROUND CHECK IN A PARTICULAR CASE, IACP WILL ENCOURAGE ITS MEMBERS TO CONDUCT A CHECK IN EVERY INSTANCE.

A WAITING PERIOD IS NOT ONLY IMPORTANT AS A TIME TO CONDUCT A BACKGROUND CHECK, IT ALSO SERVES AS A COOLING DOWN PERIOD IN WHICH A PERSON WHO TRIES TO PURCHASE A GUN DURING THE HEAT OF ANGER HAS TIME TO CALM DOWN AND RETHINK WHAT HE INTENDED TO DO WITH THE GUN.

IF WE CAN SAVE JUST ONE LIFE BY REQUIRING A WAITING PERIOD, THE MINIMAL INCONVENIENCE TO LAW-ABIDING GUN PURCHASERS AND TO THE POLICE DEPARTMENTS WILL BE WELL WORTH IT.

THANK YOU VERY MUCH FOR CONSIDERING OUR VIEWS ON THIS MATTER. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MIGHT HAVE.

Senator METZENBAUM. Thank you very much, sir. We appreciate your support. Everybody's entire statement will be included in the record.

Mr. Knox, we are happy to welcome you, Director of the Firearms Coalition, Silver Spring, MD. Would you tell us what the Firearms Coalition is and whom you represent.

STATEMENT OF NEAL KNOX

Mr. KNOX. The Firearms Coalition is an ad hoc group of people across the country, both individuals and organizations. They are gun owners, shooters, collectors, both small clubs and large clubs.

Senator METZENBAUM. Do you have members?

Mr. KNOX. No, sir, not per se. They are individuals who support my activities on the Hill. I would say that the total that I represent is somewhere between 75,000 and 100,000 people.

Senator METZENBAUM. How do you know that?

Mr. KNOX. Based on the membership of the various groups.

Senator METZENBAUM. What groups are they?

Mr. KNOX. Oh, groups like the Houston Safari Club, the——

Senator METZENBAUM. The what?

Mr. KNOX. Houston Safari Club, Western Arms Collectors, the Central Illinois Arms Collectors, groups such as that.

Senator METZENBAUM. Would you be good enough to furnish us with a list of those groups that are a part of your coalition?

Mr. KNOX. I do not have a list per se, except my basic accounting of those who make a contribution to my efforts up here.

Senator METZENBAUM. The Chair is always concerned about people who appear before our committee, whether they have 20,000 members or 50,000 members or whether they have a constituency. Go ahead and proceed and, if you could, provide us with any backup data. We would appreciate it.

Mr. KNOX. I would also add that I appear before you, Mr. Chairman, as a writer. I have been writing for years in the legislative field for Handloader and Rifle Magazines and for other magazines. I first testified before this major committee more than 20 years ago.

Senator METZENBAUM. Please proceed, Mr. Knox.

Mr. KNOX. I would like to correct one thing in my prepared testimony—the figures that I have concerning Maryland State Police. I talked to Sergeant Pepersack about those a few minutes ago. They were based upon an erroneous report from the State Police to Maryland Delegate John Leopold, and I want to check those numbers out in it.

I commend the Maryland State Police for beginning to recommend prosecutions for illegally trying to obtain a firearm. I think that as soon as the crooks find out about that, they will cease to buy guns through legal channels.

Waiting periods are not a new idea. They have been tried in about a third of the States, with roughly two-thirds of the population, and roughly three-quarters of the worst crimes—they have not worked. Prof. Jim Wright, of the University of Massachusetts, at Amherst, did a study for the Carter administration Justice De-

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partment which could find no evidence that any of these laws have succeeded in reducing the violent crime rate.

In an effort to find out why, in 1985 he released another study which showed the reason. Only 7 percent of armed felons obtained their firearms through legitimate commercial channels that can be regulated. S. 466 is the equivalent of having the State police stopping and searching every car on interstate highways, while we know that 93 percent of the crooks are traveling the backroads.

S. 466 calls for police notification of private sales, but it is ludicrous to believe that criminals would notify police of the transfer of illegally possessed guns. Not only is it illogical, the Supreme Court has said that they do not have to, for such self-incrimination is a violation of the fifth amendment.

The stated objective of the sponsors of S. 466 is to keep handguns out of the hands of criminals.

Senator METZENBAUM. Mr. Knox, can you wind up, please.

Mr. KNOX. With due respect, Senator, we spent most of the time right at the beginning where you were questioning my credentials.

Senator METZENBAUM. Well, take an extra minute, Mr. Knox.

Mr. KNOX. Sir?

Senator METZENBAUM. Take an extra minute.

Mr. KNOX. All right. Thank you very much.

Senator METZENBAUM. We want to be fair to you.

Mr. KNOX. Professor Wright found that 72 percent of handgun predators stated that if they could not obtain a handgun, they would substitute a sawed-off rifle or shotgun. That would double the murder rate.

The sponsors of waiting period legislation seem to believe that most handgun purchasers are first-time buyers. In fact, some 80 percent already own other guns which they could harm themselves with, or someone else, if that were their intent. When the same person has to go through the same check time and time again, using his time and the State police resources, I have to ask what is the real purpose.

This bill is not a modest bill. It calls for all handgun sales to be reported, and it is a duplicitous bill because it says that the police must destroy the record that they obtain of the transfer when in fact there is no requirement that they destroy anything that they obtain from that record.

Rather than take any more of the committee's time, Mr. Chairman, I will shut up. Thank you very much.

[The prepared statement of Mr. Knox follows:]

Testimony of Neal Knox

Director, The Firearms Coalition

Before The Senate Judiciary Subcommittee on the Constitution

Concerning S. 466

June 16, 1987

Mr. Chairman, Members of the Committee,

I appreciate this opportunity to comment concerning S. 466.

S. 466 is not a new idea. It is a slight variation upon a type of legislation which has been considered — and wisely rejected — by several preceding Congresses. However, S. 466 is not an untried idea. Its provisions have been adopted in various forms in about one-third the states, with roughly two-thirds of the population and three-fourths of the worst crimes.

S. 466 would require a firearm purchaser to wait seven days between the time of purchase and receipt of a handgun. During that time, police would be informed of the purchase, and would have the option of checking to determine if the purchaser has a criminal or mental record or is otherwise disqualified from purchase.

In theory, not only would this allow police to "screen" potential illegal purchasers, but it would provide a "cooling off" period during which an angry would-be gun buyer might change his mind about killing himself or someone else.

Professor James Wright, of the University of Massachusetts at Amherst, author of "Weapons, Crime and Violence in America," a study financed by a $187,000 grant from the Carter Administration Justice Department, found no evidence that waiting period laws, or any other 'gun control" law, has succeeded in reducing the violent crime rate.

Interestingly, Prof. Wright has stated that when he began the study he assumed that such laws work, and believed that his study would prove it. Instead, he found the opposite.

In a subsequent effort to determine why gun laws fail, Prof. Wright conducted a study of 1,874 adult male felons in 11 state prisons using a $397,000 Justice Department grant ("The Armed Criminal in America: A Survey of Incarcerated Felons"). It showed that of all felons who had owned a handgun (which included those convicted of "white collar" and other unarmed crimes) only 21 percent had obtained their most recent handgun from a retail store. Of those who had been convicted of armed crimes, only 7 percent obtained their guns through retail outlets — 93 percent got them through unregulatable theft, black and gray markets. All who would have been screened out by a criminal records check had obtained

their guns illegally, for such persons are prohibited from purchase or possession.

The available data do not tell us how many of that seven percent had no prior disqualifying convictions at the time they purchased their last handgun, but if we assume that half did, then S. 466 would be guaranteed to miss more than 96 percent of the handgun predators who are its primary target. What would be Congress' reaction if the Defense Department were to request funding for a weapons system unlikely to hit more than 4 percent of its targets?

S. 466 is the equivalent of having state police stopping and searching every car traveling the interstate — causing slowdowns in legitimate travel, while 96 percent of the crooks were known to be driving the back roads.

Although S. 466 demands police notification of private transfers — voluntary roadblocks on the back roads — it is ludicrous to believe that the criminal targets of the bill would notify police of the transfer when 60 to 70 percent of their handguns were known or believed to have been stolen. According to Prof. Wright, 32 percent of the handguns had been stolen by the felons themselves.

Not only is it illogical to believe that criminals who are prohibited from firearms ownership would comply with the requirement that they notify police that they possess or are attempting to obtain a handgun, the U.S. Supreme Court said in Haynes v. U.S., 1968, that they do not have to — for such a requirement amounts to forced self-incrimination, in violation of the Fifth Amendment.

The stated objective of the sponsors of S. 466 is "to keep handguns out of the hands of criminals." Prof. Wright's research suggests that might worsen the problem of armed crime: 72 percent of handgun predators state that if for some reason they could not obtain a handgun, they would carry a more-lethal sawed-off shotgun or rifle, and 77 percent of them had sawed off a gun in the past (a rarely enforced Federal felony). If S. 466 were successful it could double the murder rate, for shotguns are about three times as deadly as handguns.

Although criminals would not subject themselves to the waiting period/police notification procedure of S. 466, persons with mental disabilities or suicidal tendencies might. However, there are few mental records available to police (and a free society would overwhelmingly object if there were). Further, a records check would be unlikely to disqualify a potentially suicidal buyer.

Therefore, the only possible advantage of S. 466 would be the waiting period itself, as a "cooling off" period; but there is no evidence that either suicide rates or the rate of "passion murders" has declined where "cooling off" periods have been imposed.

Researchers have found no correlation between gun ownership and suicide rates, either nationally or internationally. The U.S. suicide rate ranks below the majority of Western European countries and Japan where personally owned firearms, particularly handguns, are scarce or non-existent. Clearly, suicide rates are related to cultural factors and other matters unrelated to gun ownership.

While there are unquestionably instances of individuals buying a gun and immediately killing themselves with it, the imposition of a waiting period does not

mean the suicide would be prevented or even delayed. A California firearms dealers told me of a case where an individual waited for 15 days for a gun with which he committed suicide in the alley behind the gun shop. Several dealers have told me of instances when a customer, told of the waiting period on handguns, purchased a rifle or shotgun without a wait and used it to commit suicide.

The most ludicrous argument I've heard concerning the "success" of a waiting period law appeared earlier this year in an article in the "Montgomery County (Maryland) Journal." The article enthusiastically reported that Maryland's waiting period law had prevented three persons intent upon suicide from obtaining handguns with which to do it — they had committed suicide by other means while awaiting permission to receive a handgun. The fact that the waiting period law failed to prevent their deaths seemed to escape the reporter.

By definition, the only persons who abide by the law — including gun laws — are law-abiding. The law-abiding citizen is not, or at least should not be, the target of our laws. Yet they will have to spend the extra time and money to make the extra trip to the gun shop; they will have to pay an increased price due to the dealer's increased overhead caused by extra handling and extra paperwork; and they will have to go through the waiting period every time they buy another gun — and for no good purpose.

The sponsors of waiting period legislation seem to believe that buyers of handguns are all first-time buyers. In fact, most buyers already own other guns with which they could harm themselves or someone else — if that were their intent. One study estimates that 80 percent of handgun purchasers already own other guns, including other handguns. So in the vast majority of purchases, the waiting period serves no purpose except to harass the law-abiding and to waste police resources investigating the records of law-abiding citizens.

As an active shooter and collector, I own more than 100 guns, yet I must go through Maryland's waiting period procedure every time I buy another handgun from or through a dealer — sometimes four or five times per year. Each time the Maryland state police must check to be sure I am not disqualified from owning a gun — and never mind that their records show that I own many. What is the benefit to the Maryland taxpayers who pay for it?

According to the most recent data supplied to Maryland Delegates, for the years 1982-84 there were an average of 27,300 handgun purchases each year and 127 denials by the State Police (one-half percent). However, efforts by the Delegates to obtain the reasons for these denials have been unsuccessful. Some individuals have reported that they were denied due to excessive unpaid parking tickets, having been convicted of a misdemeanor, or having been charged with a felony, despite having been subsequently found not guilty.

If any serious offenders — such as known active armed robbers — were found to have attempted to buy a gun by lying about their criminal records on the application form, why doesn't the Maryland State Police refer those falsifications (which can be felonies) to state or Federal authorities for prosecution? According to information obtained from State Police, there are no such referrals. That indicates that either the Maryland State Police do not care if known active criminals are attempting to illegally obtain a firearm — which I find difficult to

believe — or that active criminals simply aren't caught by Maryland's waiting period system, which I believe is quite likely.

The "Washington Post" has described S. 466 as "deliberately modest," which it appears to be by comparison to other firearms legislation supported by the sponsors. Less than two years ago Sen. Metzenbaum voted for a 14-day waiting period with mandatory police investigations of handgun purchasers, and the sponsor of the House counterpart to this bill, Rep. Edward Feighan, is the sponsor of similar legislation in this Congress, H.R. 155. It is therefore a reasonable assumption that the sponsors hope to broaden this bill should it reach the floor.

But even if it were not broadened, this legislation would break new ground, going beyond existing law in all but one or two states, for it would require every private transfer to be reported to police.

Further, despite the duplicitous language of S. 466, it establishes the basis for a handgun registration system. A few years ago, when President Jimmy Carter proposed registration for the draft, while promising that registration would not lead to conscription, the "Washington Post" wrote that "the only purpose for registration is conscription." They were obviously right — just as the only purpose for registration of firearms is confiscation.

To counter civil libertarians' objections that S. 466 would eventually result in police being informed of the whereabouts of every handgun in the hands of the law-abiding, it contains a requirement that police destroy their notice of transfer within 60 days. However, there is no requirement that police destroy records resulting from the notification, records of any investigation they have made, or any other information they create as a result of receiving the name and address of the new owner -- such as entering the data into a computer.

If, as the sponsors claim, the sole purpose of S. 466 is to assure that the buyer is not prohibited from purchase, and if the bill is not a gun registration law, then why does it require the police to be given a sworn statement describing not only the the buyer but also "(A) an accurate description of the handgun which is the subject of the proposed transaction; (B) the serial number of the handgun"?

The serial number of a gun has absolutely nothing to do with whether a person is legally qualified to own that gun.

If gun laws in general, and a waiting period in particular, are such a benefit to law and order, why is there no evidence that they have worked in any of the many places they have been tried?

If the Congress were asked to fund an experimental engine that ran on sea water instead of gasoline, the first thing that would be demanded is some evidence that it would work. If Congress learned that a third of the state legislatures had already funded a water-powered engine, and that it hadn't worked in any state, they would throw the con man and his water-powered engine off Capitol Hill.

No less should be done to S. 466.

Thank you for this opportunity to present our views.

Senator METZENBAUM. Thank you very much, Mr. Knox.

Mr. Snyder, we are happy to have you with us. Would you tell us who the Citizens Committee for the Right to Keep and Bear Arms is?

STATEMENT OF JOHN SNYDER

Mr. SNYDER. The Citizens Committee for the Right to Keep and Bear Arms is a national organization of about 500,000 members and supporters from every State in the United States. The national headquarters is on the west coast, in the State of Washington, with a Capitol Hill office here in Washington, DC, a National Advisory Council, consisting of about 200 individuals, including about 130 Members of Congress from both the House and the Senate, publisher of a monthly newsletter, and producer of the first TV pro-gun documentary film called "The Gun Grabbers."

Senator METZENBAUM. Please proceed.

Mr. SNYDER. We appreciate the opportunity to testify here this morning and we oppose this bill for several reasons. First of all, a waiting period undercuts the right to self-defense and, therefore, the right to life itself.

If the life of a single innocent person is snuffed out through criminal violence because that innocent was unable to obtain a handgun with which to defend himself or herself against criminal attack as the result of a handgun purchase waiting period requirement, the blood of that innocent person will be on the hands and consciences of the promoters of such waiting period requirement for the rest of their lives.

Senator METZENBAUM. On my time, Mr. Snyder, is the blood on the hands of those of you who opposed the waiting period with respect to Sarah Brady and Jim Brady, with respect to that young man's father, with respect to that young man talking about his friend who was murdered. Is that blood on your hands?

Mr. SNYDER. With all due respect, Senator, that question already has been answered by Mr. Baker of the previous panel. He indicated and proved that the testimony underlying that position was false or erroneous or mistaken, so I do not see how you could even raise that question at this point. That has already been knocked to smithereens by Mr. Baker.

Senator METZENBAUM. Mrs. Brady anticipated that. The fact is what about those other two people? Let us not make it just the Brady case. What about that man who comes in 2 hours after he buys a gun and goes out and kills an innocent librarian? What about that young man who comes here and tells us about his father and does not know why his life was taken by an employee of the father went out and got the gun. Is it on the hands of you. Is it on your hands, sir?

Mr. SNYDER. Senator, what about the hands of the millions of people who may be killed because they cannot get a handgun quick enough with which to defend themselves against criminals?

Senator METZENBAUM. Is there anything in this law that does not make it possible to get a handgun as fast as you need it? All you have to do is indicate you need it, so do not misrepresent what is in this bill——

Mr. SNYDER. I am not misrepresenting——

Senator METZENBAUM [continuing]. Since the bill only provides for a 7-day waiting period. And for you to come here with that kind of an outlandish statement, I think you ought to be embarrassed.

Mr. SNYDER. Senator, if you are threatened tonight, what good is it going to do you to get a handgun 7 days from now?

Senator METZENBAUM. You can get a gun immediately under our bill, and you know it because you read English well. You can get it. There is an exception provided.

Mr. SNYDER. The provision in that bill would make it possible for a racist police officer to be able to arm all people of one race in a community and prevent other people in that race from bearing arms, so I do not see how that provision at all can be defended.

Senator METZENBAUM. Now this is a racist bill, is that it?

Mr. SNYDER. It could be used—I do not say your intent is that. I do not say that at all, but I say it could be used by a certain type of official to that end.

Senator METZENBAUM. Your choice of language is——

Mr. SNYDER. Besides, Senator, what good would it do for—if you were threatened today, what good would it do you to apply to a police officer to get a certificate to purchase a handgun when you need one tonight?

Senator METZENBAUM. Well, if I need one I can get it today under my bill. I could get the exception and go down and get it. I could not have it here at this minute under any circumstances. I would have to go to some shop and buy it, and if I go to the shop to buy it and go to the police station and get the waiver.

Mr. SNYDER. I beg to differ with you on that, Senator.

Senator METZENBAUM. I do not think that is true.

Mr. SNYDER. I see that my time is expired.

Senator METZENBAUM. No, no, that is not fair to you. I interrupted you, so take a few minutes more.

Mr. SNYDER. What is not known precisely is how many times the inability of a law-abiding citizen to obtain a handgun and to obtain one quickly would result in victimization by murder. It is known that, according to a 1978 survey conducted by Cambridge Reports, Inc., for the Center for the Study and Prevention of Handgun Violence, 3 percent of the population has actually used a handgun for self-defense. That comes out roughly to over 6 million people.

Have the perpetrators of the handgun purchase waiting period requirement even begun to contemplate the millions of lives which conceivably could be jeopardized by this proposal? Have they considered the possibility that this proposal, if enacted into law, conceivably could lead to victimization of the innocent because of their inability to acquire a handgun quickly with which to fend off terrorists? This is not as farfetched as it might seem to some.

According to Sheriff Gary Painter, of Midland County, TX, there currently are at least five Marxist terrorist training camps manned by Colombians, Cubans, Libyans, and Mexicans in Mexico, just south of our border. Do handgun purchase waiting period advocates want to be held responsible for death or injury to who knows how many innocent victims because such victims or their parents were unable to obtain a handgun quickly in order to meet a terrorist threat?

We also oppose S. 466 because we think it could provide a legal basis for incipient, partial, national handgun registration. While the bill does provide for destruction of sworn statements relating to prospective handgun transactions, it does not provide for destruction of the information contained in such statements.

Senator METZENBAUM. Would you wind up, please?

Mr. SNYDER. Fine.

Conceivably, then, this information could be retained in local police records and transferred subsequently to a national handgun registry. If there is anything America's tens of millions of law-abiding firearms owners as a group most assuredly will oppose, it is national gun registration.

Thank you, Senator. I would appreciate it if the rest of the statement could be included in the record.

Senator METZENBAUM. It certainly will. Thank you, Mr. Snyder.

[The prepared statement of Mr. Snyder follows:]

STATEMENT OF

JOHN M. SNYDER

DIRECTOR OF PUBLICATIONS AND PUBLIC AFFAIRS

CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS

Mr. Chairman and Members of the Subcommittee:

Let me express my thanks for this opportunity to testify during this public hearing on S. 466, a bill to mandate a national waiting period before the sale, delivery or transfer of a handgun.

We oppose this bill for several reasons.

First of all, a waiting period undercuts the right to self-defense and, therefore, the right to life itself.

If the life of a single innocent person is snuffed out through criminal violence because that innocent was unable to obtain a handgun with which to defend himself or herself against criminal attack as the result of a handgun purchase waiting period requirement, the blood of that innocent person will be on the hands and consciences of the promoters of such waiting period requirement for the rest of their lives.

While it is not known precisely how many times the inability of a law-abiding citizen to obtain a handgun and to obtain one quickly would result in victimization by murder, it is known that, according to a 1978 survey conducted by Cambridge Reports, Inc. for the Center for the Study and Prevention of Handgun Violence, "three percent of the population has actually used a handgun for self-defense." That comes out, roughly, to over six million people. Have the perpetrators of the handgun purchase waiting period requirement even begun to contemplate the millions of lives which, conceivably, could be jeopardized by this proposal?

Have they considered the possibility that this proposal, if enacted into law, conceivably could lead to victimization of the innocent because of their inability to acquire a handgun quickly with which to fend off terrorists? This is not as far-fetched as it might seem to some. According to Sheriff Gary Painter of Midland County, Texas, there currently are at least five Marxist terrorist training camps manned by Columbians, Cubans, Libyans and Mexicans in Mexico, just south of our border. Do handgun purchase waiting period advocates want to be held responsible for death or injury to who knows how many innocent victims because such victims or their parents were unable to obtain a handgun quickly in order to meet a terrorist threat?

We also oppose S. 466 because we think it could provide a legal basis for incipient, partial, national handgun registration. While the bill does provide for destruction of sworn statements relating to prospective handgun transactions, it does not provide for destruction of the information contained in such statements. Conceivably, then, this information could be retained in local police records and transferred, subsequently, to a national handgun registry. If there is anything America's tens of millions of law-abiding firearms owners as a group most assuredly will oppose, it is national gun registration. It should be clear, therefore, that this bill, ultimately, will meet with the opposition, substantially, of 80 million law-abiding American citizen gun owners. When one considers that this is more people than vote for both major party presidential candidates every four years, one may begin to get some idea of the massive public opposition with which this bill, potentially, at least, is faced.

While the bill, if enacted into law, would undermine the legitimate interests of law-abiding citizens, it would have little, if any effect in furthering its stated purpose, a reduction in criminal violence perpetrated with the use of handguns.

According to the July, 1985 U.S. Department of Justice research report prepared for the National Institute of Justice on "The Armed Criminal In America, A Survey of Convicted Felons" by James D. Wright and Peter H. Rossi, only 21 percent of felons' handguns are obtained through retail channels. The rest, 79 percent, are obtained from family and friends, various gray and black market sources and a variety of other sources. To maintain that persons intent on committing crimes of violence would subject themselves to the checks associated with a handgun purchase waiting period requirement is to maintain an incredible position. The bill, in other words, while it might be effective in undermining the legitimate interests of law-abiding citizens, would be ineffective in undermining the nefarious interests of violent criminals.

While proponents of the waiting period concept maintain it would reduce "crimes of passion," the fact of the matter is that most "crimes of passion" occur between the hours of 10 p.m. and 3 a.m., when gun shops aren't open anyway, suggesting that the immediate availability of handguns over the counter really is not a factor in such killings.

The argument that a waiting period will create a delay while it can be determined if the buyer has a criminal record or otherwise is disqualified legally from owning a handgun also is of dubious merit.

The handgun owner licensing provisions under New York State law indicate the futility of waiting periods as crime prevention measures. The State's handgun purchasing process amounts to the most comprehensive of background checks and the longest of waiting periods, commonly one or two years for first time handgun buyers despite State law requiring action within six months. However, New York State has one of the higher crime and illegal gun ownership rates.

That criminals don't abide by waiting period provisions or other firearms-related provisions is evident also from the same Justice Department study referred to earlier in this testimony. According to it, felons, who, under Federal law are not allowed to acquire or own firearms, were asked how long it would take them, upon release from prison, to obtain the handgun they wanted. According to the report, "nearly 80 percent of the sample said they could get a handgun in a few days or less; among the Predators, the figure rose to about 90 percent. Over half the predators said they could arm themselves in a few hours."

A mandated national handgun purchase waiting period, then, really would not have a positive impact on crime. It might, however, have a negative impact by telling the elderly, city residents, women and others who most frequently are victims of violent crime that they must wait a long time before they can purchase a handgun with which to defend themselves, thus letting them know that now they are going to be even more helpless and supine before the criminal element than they were before the waiting period law.

In fact, a waiting period requirement could be even more burdensome for law-abiding citizens than a licensing requirement. Whereas a licensing system requires only a single check on a potential owner, a waiting period requirement requires approval for each individual purchase. When one considers that tens of millions of law-abiding handgun owners would oppose, adamantly, a national handgun owner licensing law, one can imagine how much more adamantly opposed those tens of millions of voters would be to a national handgun purchase waiting period requirement.

When one considers, also, that there have been times when agencies, so overloaded with paperwork, have had to suspend firearms forms processing, and that this kind of eventuality could occur under the proposed system, one can see another reason for general opposition to the proposal.

Section 2.(a)(p)(1)(B) of S. 466, relating to the issuance of a certificate from the chief law enforcement officer of the place of residence of the transferee to the transferor regarding requisite access to a handgun because of a threat to the life of the transferee, since it contains no clear statement regarding the cause for the issuance of such a certificate, creates the possibility for capricious issuance of such certificates.

This provision could be used by a local racist officer, for instance, to arm all members of one racial group to the detriment of members of another racial group. It is, in other words, a potentially very dangerous provision.

Despite the support S. 466 has received from spokesmen for some organizations of law enforcement officers, its enactment would not necessarily be the boon to law enforcement professionals its supporters claim. One thing about it which disturbs Gerald S. Arenberg, Executive Director of the National Association of Chiefs of Police, is that it might create possible tortious liability for chief law enforcement officers of the places of residence of transferees if such transferees victimize individuals subsequent to apparently legitimate handgun acquisition. In addition, Director Arenberg informs me that the NACP currently is polling officers via the mail regarding their opinion of S. 466. It would seem that it would be premature to conclude that S. 466 has the general support of law enforcement before completion of this poll.

Senator METZENBAUM. Mr. Markva, representing the Gun Owners of America, Springfield, VA. Would you tell us who that group is?

Mr. MARKVA. Yes, sir. We are a grass roots lobby organization, with members of over 100,000 nationwide.

Senator METZENBAUM. How do you know that you have 100,000 members? Do you have a membership list or something?

Mr. MARKVA. Yes, sir.

Senator METZENBAUM. And there are 100,000 members in it?

Mr. MARKVA. Yes, sir.

Senator METZENBAUM. Dues-paying members?

Mr. MARKVA. Excuse me?

Senator METZENBAUM. Dues-paying members?

Mr. MARKVA. Yes. Yes, we have yearly dues.

Senator METZENBAUM. Proceed.

STATEMENT OF CRAIG MARKVA

Mr. MARKVA. My name is Craig Markva, and I serve as the Governmental Affairs Representative of Guns Owners of America. We appreciate this opportunity to testify in opposition to S. 466.

Because of the time, I am going to delete some of the things I was anticipating saying, but I wanted to start off by saying it is important to note that a large source of homicides involve domestic violence, however, domestic disputes do not immediately result in a decision to kill. These unfortunate situations exist over long periods of time, certainly longer than any proposed waiting period.

A 1977 Police Foundation study of police records in Kansas City discovered that 90 percent of the homicides had been preceded by past disturbances at the same address. The study reported that the disturbances were serious enough to have the police called in to investigate. The median number of reported previous disturbance calls was five per address.[1]

It seems evident that these rates of domestic homicides can hardly be considered isolated outbursts. Rather, they are the culmination of a long pattern of hatred, interpersonal abuse and domestic violence. A waiting period of 14 or 21 days before a citizen could buy a gun would have no serious effect on domestic homicide.

There is one axiom that can be acknowledged on both sides of this debate: Criminals will ignore the so-called waiting period just as they currently ignore existing gun laws. Criminals are no more in the habit of purchasing guns from legitimate sources than any dope addict is to dropping by his local drug store for some heroin.

This belief is confirmed in the National Institute of Justice's 1985 research report, "The Armed Criminal in America." [2] In a poll of convicted felons, 82 percent believe that gun control laws will affect only the law-abiding; any criminal "who wants a handgun is going to get one, no matter how much it costs."

The study further reported that criminals obtained their most recent handgun in the local illicit firearms market. When asked how quickly they were able to acquire the gun, they overwhelming-

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[1] Ed. Don B. Kales, Jr., Firearms and Violence, Pacific Institute for Public Policy 1984, p. 43.

[2] James D. Wright, et al., "The Armed Criminal in America," National Institute of Justice, July 1985, p. 37.

ly responded, "almost immediately." Only 10 percent reported that it took more than a few days.

The NIJ study made a very clear and essential point that predatory criminals, who acquired a handgun specifically for use in crime, heavily exploited informal, off-the-record means and sources and rarely went through customary retail channels.

After reviewing this evidence, we can conclude that the only person waiting period legislation is aimed at is a law-abiding citizen.

In the view of gun owners, a better term for the so-called "waiting period" is "permit to purchase" proposals. This is because waiting period proposals essentially require the police or another designated bureaucratic arm of the government to conduct a background check on a prospective buyer and grant approval or disapproval for purchase.

In addition, a government permit to purchase goes against the concept of American justice. Under S. 466, law-abiding citizens are presumed guilty because they want to purchase a gun, and would only be allowed to do so after proving their innocence or reason to purchase to the governmental authorities. The violent criminal who uses a gun for a criminal act gets better treatment. He is presumed innocent of any crime until proven guilty.

Permit to purchase legislation thus places the law-abiding citizen in the position of going, hat in hand, to beg for permission from his own government before that person can purchase a gun. This permission will depend upon the whims of the bureaucrats who must deem the American citizen worthy of his government favors.

New York City is an example of bureaucrats denying private citizens the right to keep and bear arms, while the criminals have open season. In 1983, Igor Hutorsky was a co-owner of a furniture store in Brooklyn. Mr. Hutorsky had emigrated to the United States 3 years before in order to escape the tyranny of the Soviet Union. One night, two thugs entered his store and demanded all his money. He complied with their demand. Apparently unsatisfied with his sacrifice, they shot him and left him to die. Two hours later, he died on an operating table.[3]

However, this tragedy is compounded by the fact that his partner had applied for permission to keep a handgun in the store some time before the fatal shooting. Even 4 months after the murder, the former partner had still not heard from the police regarding his request to purchase a handgun for protection. This is where the debate for a waiting period meets the harsh reality.

Senator METZENBAUM. Mr. Markva, could you wind up with one sentence?

Mr. MARKVA. Yes, I certainly can.

Gun Owners of America asks the committee, what will the innocent American citizen protect himself with while he is waiting for permission to own something that is guaranteed to him by the Constitution?

Thank you.

[The prepared statement of Mr. Markva follows:]

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[3] Novae Russkae Slovo, Vol. LXXII, No. 26.291, Sunday, Nov. 6, 1983.

TESTIMONY OF

Craig C. Markva, Governmental Affairs Representative

Gun Owners of America

Presented Before The Senate Judiciary Committee

Subcommittee on the Constitution

June 16, 1987

Chairman Metzenbaum, members of the Subcommittee:

My name is Craig Markva. I serve as Governmental Affairs representative of Gun Owners of America. Gun Owners represents more than 100,000 United States citizens who believe very strongly in the Constitutional guarantees of the Bill of Rights. We appreciate the opportunity to testify in opposition to S.466 relating to the proposed waiting period for gun purchases.

It has been more than three-and-one-half years since the last hearing on the issue of waiting periods was considered by this committee. Once again this bill is being considered based upon unsubstantiated opinions and mass media hysteria.

We call upon this committee to reject any proposal to set public policy in the area of firearms that violates the Second Amendment, as S. 466 would upon enactment.

Despite what testimony you may hear today, evidence that waiting periods will effectively reduce crime is not readily available. Cities with waiting periods of one kind or another often have worse records of criminal use of firearms than cities without such restrictions on the law-abiding.

A case that is frequently cited in support of a waiting period is the example of John Hinckley, Jr. The tragedy of Hinckley's shooting of the President is part of a good deal of emotional debate and great sympathy. However it has little or nothing to do with waiting periods.

Hinckley's was a case of extraordinary premeditation over many months. Prior to his attempted assasination of the President, Hinckley was arrested in Nashville, Tennesee as he boarded an airplane with two handguns in his carry-on luggage. These guns had been purchased in California, a state that currently has a 15-day waiting period. Hinckley also bought a .22-caliber revolver at a pawnshop in Dallas using his valid Texas drivers license.

Those three guns were all legal purchases. At the time of his attack Hinckley had no history of mental illness on police files. There is also no access to these mental health records available to the public or police for the purpose of conducting a security check. Clearly, if there had been a nationally mandated 7-day waiting period when Hinckley was stalking his prey, it would have had no effect whatsoever on Hinckley's outrageous assault.

In addition, a large source of homicides involve domestic violence. However, domestic disputes do not immediately result in a decision to kill. These unfortunate situations exist over long periods of time, certainly longer than any proposed waiting period.

A 1977 Police Foundation study of police records in Kansas City discovered that "90 percent of the homicides had been preceded by past disturbances at the same address..." The study reported that the disturbances were serious enough to have the police called in to investigate. The median number of reported previous disturbance calls was <u>five per address.</u>

It seems evident that these rates of domestic homicide can hardly be considered isolated outbursts. Rather they are the culmination of a long pattern of hatred, interpersonal abuse and domestic violence. A waiting period of 14 or 21 days before a citizen could buy a gun would have no serious effect on domestic homicide.

Another consideration that has gone unnoticed is the immense nationwide drain on police resources a waiting period would impose. Law enforcement dollars that otherwise could be used to fight crime would have to be allocated to paper-shuffling tasks. And, all this, is merely to check out the private lives of honest citizens who are not criminals to see if they are worthy of buying a gun.

More money, more bureacracy, and greater violations of privacy will not make America's streets safe from violent crime. As always, the law-abiding American taxpayer will be the one who has to bankroll this increased government interference.

There is one axiom that can be acknowledged on both sides of this debate. Criminals will ignore the so-called waiting period just as they currently ignore exisiting gun laws (as well as any other law they decide to break). Criminals are no more in the habit of purchasing guns from legitimate sources than any dope addict is to dropping by his local drug store for some heroin.

The well-known political pollster Patrick Caddell conducted a poll in 1978 to determine how the public felt about gun-control laws. Of those polled, 78% agreed that "gun control laws affect only law-abiding citizens; criminals will always be able to find guns."

This belief is mirrored by the National Institute of Justice's (NIJ) 1985 Research report, The Armed Criminal in America. In a poll of convicted felons, 82% believed that the gun-control laws will affect only the law-abiding; any criminal "who wants a handgun is going to get one, no matter how much it costs."

The study further reported that criminals obtained their most recent handgun in the local illicit firearms market. When asked how quickly they were able to acquire the gun, they overwhelmingly answered, "almost immediately." Only 10% reported that it took more than a few days.

The NIJ study made a very clear and essential point that predatory criminals, who acquired a "handgun specifically for use in crime, heavily exploited informal, off-the-record means and sources and rarely went through customary retail channels."

After reviewing this evidence we can conclude that the only person "waiting period" legislation is aimed at is the law-abiding citizen -- those who are not responsible for violent crime in the United States.

In the view of Gun Owners, a better term for the so-called "waiting period" is "permit-to-purchase" proposals. This is because waiting period proposals essentially require the police, or another designated bureaucratic arm of the government, to conduct a background check on a prospective buyer and grant approval, or disapproval, for the purchase.

In addition, a government "permit to purchase" goes against the concept of American justice. Under S.466 Law-abiding citizens are presumed guilty because they want to purchase a gun, and would only be allowed to do so after proving their innocence (reason to purchase) to the governmental authorities. The violent criminal who uses a gun for a criminal act gets better treatment -- he is presumed innocent of any crime until proven guilty. American gun owners must be treated equally under the law.

Permit to purchase legislation thus places the law-abiding citizen in the position of going, hat in hand, to beg for permission from his own government before that person can purchase a gun. This permission will depend upon the whims of the bureaucrats who must deem the American citizen worthy of his government's favors.

New York City is a horrible example of bureaucrats denying private citizens the right to keep and bear arms while the criminals have open season. Any other locality under a federal permit-to-purchase law at the federal level would be able to place the lives of the citizens of that city in the same jeopardy that the citizens of New York City live in day after day.

In 1983, Igor Hutorsky was a co-owner of a furniture store in Brooklyn. Mr. Hutorsky had emigrated to the U.S. three years before in order to escape the tyranny of the Soviet Union. One night two thugs entered his store and demanded all his money. He complied with their demand. Apparently unsatisfied with his sacrifice they shot him and left him to die.

He died two hours later on an operating table. However, this tragedy is compounded by the fact that his partner, Aron Arommelmood, had applied for permission to keep a handgun in the store some time before the fatal shooting. Even four months after the murder, Mr. Arommelmood had still not heard from the police in regard to his request to purchase a handgun for protection. This is where the debate for a waiting period meets a harsh reality. It is a reality that is never discussed by proponents of waiting periods.

There has not always been debate about what the Second Amendment means. During the first session of this body, Congressman Richard Henry Lee, a representative from Virginia, entered into the Congressional Record the true purpose of the Second Amendment. Lee stated:

> To preserve liberty, it is essential that the whole body of the people always posses arms, and be taught alike, especially when young, how to use them...[T]he constitution ought to secure a genuine, and guard against a select, militia, by providing that the militia shall always be kept well organized, armed and disciplined, and include, according to the past and general usage of the States, all men capable of bearing arms; and that all regulations tending to render this militia useless and defenseless, by establishing select corps of militia, or distinct bodies of military men not having any permanent interest and attachments in community, to be avoided...

There are other nations which utilize extremely restrictive gun control laws for the purposes of keeping their citizens under an oppressive reign of totalitarianism. Alexander Solzhenitzen helps to put in perspective the roots of this proposed legislation in commenting on crime and punishment in the Soviet Union. He writes in The Gulag Archipelago:

> The (Soviet) state, in its criminal code, forbids its citizens to have firearms or other weapons, but does not itself undertake to defend them! The state turns its citizens over to the power of the bandits -- and then through the press dares to summon them to "social resistance" against these bandits. Resistance with what? With umbrellas? With rolling pins?

Gun Owners of America asks the committee, what will the innocent American citizen protect himself with while he is waiting for permission to own something that is guaranteed to him by the Constitution? Will it be anything better than what the Soviet citizen has available to him? We urge the members of the committee to vote against S.466.

Senator METZENBAUM. I want to thank you, Mr. Markva, and each of the witnesses. I really apologize for the fact that we had so many witnesses today, but I was under some pressure from my colleagues to get certain people, give certain people an opportunity to be heard. I am not sure the hearing has proven conclusively whether we should or should not pass my legislation, which of course I think we should. It has proven conclusively to the chairman that he should not have 15 witnesses in one morning.

The hearing stands adjourned.

[Whereupon, at 12:09 p.m., the subcommittee was adjourned, subject to call of the Chair.]

APPENDIX

ADDITIONAL STATEMENTS

Statement on S. 466, A Bill to Provide for a Waiting Period before the Sale, Delivery, or Transfer of a Handgun.

By

David J. Bordua, Ph.D.
Professor of Sociology
University of Illinois at Urbana-Champaign

Background

I am a Sociologist-Criminologist who has studied private firearms ownership in general and the relationship to violent crime since the mid 1970's. I am also familiar with the general literature on the subject. Furthermore, I have studied police organization and operations since 1965. I would like to make several comments on S. 466.

Proposed Police Screening

1. As the Bill is written the chief law enforcement officer is not actually required to do anything. Given the possible large number of transfers to be reported to the police, it seems quite unlikely that departments would place such a voluntary "duty" high among their activities.

2. Even when screening efforts are made the information available to local police may be quite limited.

3. Finally, the provision whereby police are to destroy sworn statements from potential transferees not only creates more work for local police but opens the possibility of legal difficulties if transferees are not satisfied that the material has in fact been destroyed.

Compliance by Private Citizens

1. There is no really good research bearing directly on private citizen compliance with such transfer requirements. The Firearms Owners Identification (FOI) Card system in Illinois has a similar provision in that private transfer is prohibited unless the transferee displays an FOI Card, but no research has been done on this provision.

2. My own research on private owner compliance with the three-day "cooling off" waiting period in Illinois indicated that noncompliance is in all likelihood quite widespread.

Waiting Periods and Offenders' Gun Sources

1. Imprisoned criminals studied in one study in Florida were highly unlikely to have acquired guns within a proposed three day waiting period and gotten them from a regulatable retail source.

2. The only national study of prisoners indicates that serious criminals, i.e. ones likely to have records discoverable under S.466 either steal handguns or get them from black market street sources where compliance with S. 466 would be extremely unlikely.

Conclusions and Recommendations

It is my view based on the above that S. 466 would not achieve the intended results -- a reduction in violent crime involving firearms.

My recommendation is that much more careful research be done to determine the operation and efficiency of current state practices with respect to screening, waiting periods, etc. The variety of existing state provisions provides an opportunity to study in depth the operation of programs with different provisions.

AMERICAN BAR ASSOCIATION
GOVERNMENTAL AFFAIRS OFFICE • 1800 M STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

STATEMENT OF

RICHARD E. GERSTEIN

ON BEHALF OF THE

AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee,

My name is Richard E. Gerstein. I am a partner in the firm of Bailey, Gerstein, Rashkind and Dresnick in Miami, Florida. I was State Attorney for the Eleventh Judicial Circuit of Florida (Miami) from 1957 to 1978. In addition, I was President of the National District Attorneys Association during 1966-67, and President of the Florida Prosecuting Attorneys Association from 1959 to 1961.

I served as Chairperson of the American Bar Association's Criminal Justice Section in 1979-80. I am very pleased to submit this statement on behalf of the American Bar Association to voice our strong support for the passage of S. 466, providing for a seven-day waiting period before the purchase of handguns.

The American Bar Association, since 1973, has supported amendments to strengthen the Gun Control Act. It has consistently opposed measures that would loosen restrictions, particularly those dealing with record keeping and the interstate sale of firearms.

As early as 1965, the ABA expressed support for effective legislation to control the importation, sale, possession and transportation of firearms. This position was reaffirmed by the Association in 1973.

In 1975, the ABA House of Delegates adopted a detailed policy on measures necessary to strengthen the Gun Control Act.

It specifically strongly supports Congressional legislation that would require gun dealers to verify through a waiting period and local police record checks whether or not a prospective customer may be barred by a prior conviction, age or mental incompetency from purchasing a handgun.

In 1983, the ABA reaffirmed the earlier policy statements and endorsed the strong gun control position recommended by the Section of Criminal Justice Task Force on Crime. I was the chairperson of that Task Force.

Let me turn now to S. 466 and the ABA's principal reasons for supporting this bill.

I. A Waiting Period Is Necessary to Implement Existing Federal Law

A waiting period should be required for the purchase of a handgun to allow for a records check to ensure that the purchaser is not prohibited from owning a handgun by the Gun Control Act of 1968 or Title VII of the 1968 Omnibus Crime Control and Safe Streets Act. This is simply what S. 466 would provide.

A fundamental purpose of the Gun Control Act of 1968 and of the Omnibus Crime Control and Safe Streets Act was to reduce violent crime, including (or by) preventing the possession of handguns by proscribed groups of people. Under those Acts certain categories of individuals are ineligible to receive firearms that have been shipped in interstate commerce. These include:

Fugitives from justice
Persons under federal or state felony indictment
Persons convicted of a federal or state felony
Persons ineligible by state or local law to possess a firearm
Minors, under 18 years of age for rifles and shotguns, and under

21 years of age for handguns

Adjudicated mental defectives or persons committed to a mental institution; mental incompetents

Unlawful users of or addicts to any depressant, stimulant, or narcotic drug

Persons dishonorably discharged from the United States Armed Forces

Former United States citizens

Illegal aliens.

However, these Acts have not resulted in preventing unlawful sales. A person purchasing a firearm from a dealer is required only to sign a form on which he affirms by sworn statement that he is not barred from purchasing a firearm. This signature relieves the dealer from any liability for illegal transfer, as long as he requests and examines a form of purchaser identification, other than a social security card, that "verifies" the purchaser's name, age, and place of residence. There is, at present, no effective method to verify a purchaser's eligibility. Since drug addicts, felons, and mentally disabled persons are not the best risk for "the honor system," a waiting period between the time of signing the presently required form and delivery of the handgun to the purchaser to permit the verification of the purchaser's eligibility is sensible and necessary to effectuate the purposes of the Acts. Dealers should be required to contact law enforcement authorities to verify a purchaser's eligibility. This requirement may also provide a "cooling off" period for individuals who might otherwise purchase and use a handgun in the heat of passion.

2. A Federal Response is Necessary to keep Handguns from Proscribed Individuals.

The plethora of contradictory state gun laws has made their enforcement ineffective. A waiting period providing for a records check in one locality or state is rendered ineffective where a person barred by federal law from purchasing a handgun can circumvent that law merely by purchasing it in a neighboring state.

There is need for a federal strategy that would provide consistency and uniformity across state boundaries. Federal gun laws have failed to achieve their intended purpose due in part to this unintended loophole and the lack of an adequate enforcement mechanism.

Opponents of this bill argue that legislative controls on criminal purchases of handguns are futile. They point to a study which concluded that most previously convicted criminals did not obtain the handguns they used in commission of further crimes through legitimate commercial channels. They point to continued recent growth in crimes with guns and single out gun control laws as futile or resulting somehow in more crime. They urge abandonment of efforts to control the purchase of handguns. This is a flawed and dangerous line of argument.

Statistics developed by the same author cited favorably by opponents of S. 466, James D. Wright, in another study ("Weapons and Violent Crime," conducted in 1981 in conjunction with the Social and Demographic Institute of the University of Massachusetts) suggest a relationship between the growth in numbers of guns and the growth in violent crime. The study estimated that in 1978 approximately 120 million guns were in private ownership in the United States, of which between 25 and 30 percent are handguns. From 1960 to 1978 the homicide rate increased from about 5 per 100,000 population to 9 per 100,000 population. The percent of homicides committed with firearms increased from 53 percent to 63 percent, about three-fourths of the homicides committed with firearms involve handguns. The number of robberies during the 1960 to 1978 period increased by 400 percent. Three-fifths to two thirds of those robberies were armed robberies, and 60 to 65 percent of them involved a firearm.

Clearly, limiting access to handguns by those deemed by Congress most likely to misuse them should help reduce their use in violent crimes.

3. S. 466 imposes an insignificant burden upon law-abiding handgun purchasers.

S. 466 imposes an insignificant burden upon law-abiding handgun purchasers, and it meets the concerns expressed about previously proposed legislation by its emergency purchase exception, its optional provision for state records checks, and its provision for destruction of application records.

S. 466 will not prevent purchase and ownership of handguns by any law abiding individual. During consideration of related (similar) bills in prior Congresses, critics have pointed to delays of several months up to a year in some states as a deprivation of rights. S. 466 provides for a very short period of delay between application and delivery. One week is less than delays frequently occurring in the purchase of a wide range of consumer goods, albeit without a governmental purpose. However, in the case of handgun purchases there is a compelling state interest involved--deterring crimes committed with handguns, providing for the public safety and welfare, and preventing loss of life.

Further, S. 466 provides for emergency purchases where the purchaser's life or safety may be in jeopardy.

This bill leaves it to the states and localities to determine whether a records check shall be performed. The seven-day period makes such a check possible and feasible by local law enforcement agencies, but does not make it mandatory.

S. 466 also provides for the destruction of the purchaser's application within sixty days. It does not provide for a permanent record of any kind, as opponents have alleged.

S. 466 has been carefully crafted to minimize its impact on the millions of lawful gun purchasers, while meeting the important public purpose of preventing handgun purchases by those currently

proscribed by federal law. The proposal for a seven-day waiting period under S. 466 does not broaden the limitations on handgun ownership contained in existing law; it simply enables the intent of the law to be fulfilled - an intent that has wide public support. This bill also has the overwhelming support of law enforcement officers throughout the country.

Handguns should be kept out of the hands of those who Congress has already determined should not have them. S. 466 provides a carefully-drawn and limited method to insure Congressional intent will be carried out. The bill deserves your strong support.

WAITING PERIODS AND POLICE SCRUTINY FOR EXERCISE OF CONSTITUTIONAL RIGHTS: TESTIMONY ON S. 466

by

Stephen P. Halbrook, Ph.D., J.D.*

Subcommittee on the Constitution

Senate Committee on the Judiciary

June 16, 1987

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*Attorney at Law, Fairfax, Virginia; Ph.D., Florida State University; J.D., Georgetown University. Former philosophy professor, Tuskegee Institute, Howard University, and George Mason University. Author of The Fourteenth Amendment and the Right to Keep and Bear Arms, The Right to Keep and Bear Arms: Report of the Subcommittee on the Constitution, Senate Judiciary Committee, 97th Cong., 2d Sess., 68-82 (1982); Tort Liability for the Manufacture, Sale, and Ownership of Handguns? 6 HAMLINE UNIV. LAW REVIEW 351-382 (1983); That Every Man be Armed: The Evolution of a Constitutional Right (University of New Mexico Press 1984); and To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791, 10 Northern Kentucky Law Review 13-39 (1982), reprinted in 131 CONG. REC., 99th Cong., 1st Sess., S9105-9111 (July 9, 1985); The Right to Bear Arms in the First State Bills of Rights, 10 VERMONT LAW REVIEW 255-320 (1985); and Bear Arms and Go To Jail, COMMUNITY FORUMS ON THE CONSTITUTION, 14 pp. (American Bar Association 1987); and Firearms, the Fourth Amendment, and Air Carrier Security, 52 JOURNAL OF AIR LAW AND COMMERCE 585-680 (1987).

S. 466 and H.R. 975 require a seven day waiting period before one may exercise the constitutional rights to keep and bear arms and to protect life. They require that police be notified of the names and other personal information of American citizens who would exercise the rights guaranteed by the Second Amendment. A person who "requires access to a handgun because of a threat to the life" of such person would be exempt from the waiting period only if such person could convince the chief law enforcement officer of his place of residence to give him a certificate.

The law enforcement officer may arbitrarily refuse to issue a certificate to a person who received death threats, for the bills provide that "nothing in this subsection shall be interpreted to require any action by a chief law enforcement officer which is not otherwise required." Moreover, the bills provide no sanctions to require law enforcement officers to destroy within 60 days personal information about applicants. This information includes everything necessary to set up a firearm registration system: description and serial number of the handgun, and name, address, and birthdate of the transferee. The local chief law enforcement officer would have sole discretion to determine whether receipt or possession of the handgun would violate federal law or the state or local law of the residence of the transferee. No provision is made for transferees with dual residences.

This legislation is equalivent to a massive surveillance system in which those who exercise constitutional rights are subjected to police scrutiny. Neighbors, friends, and collectors could not trade handguns without informing the police first. Bill of rights freedoms are priceless rights, deprivation of which is irreparable harm and not a "slight inconvenience." The proposed bills are no different than

requiring a waiting period and police background checks to exercise the rights of free speech and press, assembly, and petition, under the guise that subversion, riots, and criminal conspiracies will be stamped out. They recall laws which required that membership lists of controversial groups be turned in to authorities, in order that the right of association not lead to Communist infiltration.

These bills create a presumption that each and every American citizen is a convicted felon, narcotics addict, or other prohibited person. They would impose a chilling effect and prior restraint on exercise of constitutional rights, with the police acting as the board of censors. Requiring a citizen to wait a week to purchase a handgun pending police approval is no different than prohibiting the citizen from buying a newspaper for a week or joining a labor union for a week. By the same logic, the police could conduct warrentless searches and seizures of our persons and houses for a week, and arrest all persons in possession of incriminating evidence.

The police are no more entitled to know what firearms are possessed by citizens any more than what books they read. Proponents may as well argue that it would be only a "slight inconvenience" to allow police to conduct routine searches of persons, autos, and homes, in order that would-be criminals are stopped.

The Supreme Court has recently denied that some Bill of Rights freedoms "are in some way less 'fundamental' than" others. "Each establishes a norm of conduct which the Federal Government is bound to honor -- to no greater or lesser extent than any other inscribed in the Constitution. Moreover, we know of no principled basis on which to create a hierarchy of constitutional values . . . ."[1] The proposed waiting period,

to quote an earlier opinion, "appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments . . . ."[2] Misuse of the press or of arms may be punished, but Congress may pass no law restraining exercise of these rights. After quoting the First Amendment, the Court has referred to "the equally unqualified command of the Second Amendment: 'the right of the people to keep and bear arms shall not be infringed.'"[3] Moreover, these arms include pistols and revolvers as well as rifles and shotguns, just as pamphlets and leaflets are as protected as newspapers and periodicals.[4]

The Supreme Court has also stated: "But when we do have evidence that a particular law would have offended the Framers, we have not hesitated to invalidate it on that ground alone. Prior restraints, for instance, clearly strike to the core of the Framers' concerns, leading this Court to treat them as particularly suspect."[5] There can be no doubt how the Framers of the Bill of Rights would have regarded waiting periods for exercise of and routine police surveillance of constitutional rights.

Second Amendment rights were enumerated because the Framers recalled how the British sought to deprive the colonists of their private arms. The Declaration of Causes of Taking Up Arms of 1775 complained how General Gage had tricked the citizens of Boston into surrendering their arms (allegedly for temporary "safekeeping") with their own magistrates, and then had his Redcoats seize the arms, which included muskets, pistols, and blunderbusses.[6]

The disarming of the people of Boston was widely reported in colonial newspapers and clarified for all patriots Gage's tyrannical designs. For instance, the Pennsylvania Evening

Post reported that "the Governor and gentlemen of Boston have agreed to open the town, on condition of the inhabitants delivering up their arms to the Selectmen."[7] A patriot wrote from Roxbury: "Gage and his troops are immured within the walls of Boston; and . . . our friends are entrapped by them:--We have some hope they will be liberated this day; Gen. Gage has proposed, upon their surrendering their arms, that they may march out; they surrendered their arms yesterday."[8]

After collecting their arms, Gage refused to allow the people to leave Boston. It was reported from New London: "By the post, who left the head quarters at Roxbury, last Monday o'clock P.M. we learn that only two persons have been permitted to come out of Boston that day, that no more of the inhabitants would be permitted to leave the town for the present; and that on the same day a town meeting was to be held in Boston, when the inhabitants were determined to demand the arms they had deposited in the hands of the Selectmen, or have liberty to leave the town."[9]

Meanwhile British troops began plundering houses in Boston,[10] and Gage proclaimed martial law, ordering the patriots to lay down their arms. [11] The following is a typical patriot's response:

> What terms do you hold out in this gracious proclamation? . . . Now, Sir, waving all that may be said of your hypocrisy, cruelty, villanry, treachery, perfidy, falsehood, and inconsistency, are you not ashamed to throw out such an insult upon human understanding, as to bid people disarm themselves till you and your butchers murder and plunder them at pleasure! We well know you have orders to disarm us, and what the disposition of the framers of these orders is, if we may judge from the past, can be no secret.[12]

Can there be any doubt how the Framers would have reacted to a law that Americans may not purchase firearms until the authorities approve such purchase? The same newspapers which

carried the above reports routinely advertised firearms for sale and made no secret what they would be used for.[13] One of the objectives of the right to keep and bear arms as envisioned by the Framers is to hold the rulers in check--including the authorities who would decide whether firearms may be purchased under the proposed legislation.

When the Constitution was proposed in 1787 without a Bill of Rights, the federalists argued that one was unnecessary, in that Congress had no enumerated power to control rights such as a free press and bearing arms. Recalling British abuses, the antifederalists demanded written guarantees. Proponents of a bill of rights opposed any requirement that persons who exercise basic freedoms must first notify the authorities. For instance, one such proponent noted: "The project of muffling the press, which was publicly vindicated in this town [Boston], so far as to compel the writers against the government, to leave their names for publication, cannot be too warmly condemned."[14] Richard Henry Lee wrote that "to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them . . . ."[15] The Supreme Court recently noted:

> The remarks of Richard Henry Lee are typical of the rejoinders of the Antifederalists. . . . The concerns voiced by the Antifederalists led to the adoption of the Bill of Rights. . . .
>
> The[16] fears of the Antifederalists were well founded.

When James Madison proposed the Bill of Rights in 1789, he wrote that the proposed amendments concerning the press and arms "relate first to private rights . . . ."[17] Ten days after its introduction, federalist leader Tench Coxe wrote of what became the Second Amendment: "As civil rulers, not having their duty to the people duly before them, may attempt to

tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms."[18] Madison endorsed Coxe's analysis, which was widely reprinted without contradiction.[19]

St. George Tucker, the first major commentator on the Constitution, wrote: "The right of self-defense is the first law of nature . . . . Wherever . . . the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction."[20]

In the Dred Scott decision, the Supreme Court conceded that if African Americans were citizens, they would be "entitled to the privileges and immunities of citizens" and would be exempt from the special "police regulations" applicable to them. "It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies. . .; and it would give them the full liberty of speech . . .; to hold public meetings upon political affairs, and to keep and carry arms wherever they went."[21]

During Reconstruction, the Court stated that the rights of the people "peaceably to assemble for lawful purposes" and "of bearing arms for a lawful purpose" were not "granted" by the Constitution because they existed long before its adoption.[22] The amendments which recognize these rights serve to "restrict the powers of the national government . . . ."[23] A second opinion again recognized "the right of the people to keep and bear arms" and repeated that the Second Amendment is a

limitation "upon the power of Congress and the National government . . . ."[24]

At the turn of the century, the Court wrote of "the freedom of speech and of the press" and "the right of the people to keep and bear arms" that "the law is perfectly well settled that the first ten Amendments to the constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we inherited from our English ancestors . . . ."[25] And in 1939, the Court held that the Second Amendment protects private possession of a weapon which "is any part of the ordinary military equipment or that its use could contribute to the common defense."[26] Historically defined, "the Militia comprised all males physically capable of acting in concert for the common defense" and "these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time."[27]

Inherent in the right to keep and bear arms is the right to purchase arms. "The right to keep arms necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair."[28] The Second Amendment has recently been held to imply that handguns are not unreasonably dangerous when marketed to the general public.[29] Being a penumbra of a fundamental, constitutional right, the right to purchase handguns cannot be infringed by waiting periods and police surveillance.

The proposed legislation will endanger legitimate self-defense because an emergency may occur during the seven day waiting period, and there may not be time to obtain a law enforcement certificate that the potential victim requires

access to a handgun because of threats to his or her life. A similar law restricting pistols was held unconstitutional because it "would place law-abiding citizens entirely at the mercy of the lawless element. . . . For all practical purposes it is prohibition of the constitutional right to bear arms. There would be no time or opportunity to get such permit . . . ."[30]

Even if there is time to get the law enforcement certificate showing imminent danger to life, many chief law enforcement officers refuse to recognize the right of ordinary citizens in danger to have arms. In some cases, it has taken years of protracted litigation to require such officers to issue firearms permits to which citizens are entitled.[31] The Indiana Court of Appeals has explained the problem as follows:

> We think it clear that our constitution provides our citizenry the right to bear arms for their self defense . . . .
>
> In Schubert's case it is clear from the record that the superintendent decided the application on the basis that the statutory reference to "a proper reason" vested in him the power and duty to subjectively evaluate an assignment of "self-defense" as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant "needed" to defend himself.
>
> Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the organized military and police forces even where defense of the individual citizen is involved.[32]

The court went on to find the ordinary citzen's interest in self-defense to be a proper reason for issuance of the license, and rejected the following "Catch-22":

> Any ordinary citizen applying for a license could be "factually" denied a permit because no one had actually threatened him. Thus, he would have no "need" to defend himself. Similarly, if threatened, the permit could be denied on the basis that the official police agencies were capable of handling the matter so that he had no "need" to defend himself.[33]

Indeed, in some states the courts have upheld police denials of firearms permits under the theory that handguns cannot be effectively used by private citizens for self-defense. Physicians who carried narcotics in their bags in high crime areas at night were not entitled to permits because, the New Jersey Supreme Court alleged, "their possession of handguns in the streets would . . . furnish hardly any measure of self-protection . . . ."[34] Massachusetts' highest court affirmed the one year mandatory prison sentence of a person who was repeatedly assaulted with a knife and complained to police to no avail, even though "it is possible that the defendant is alive today only because he carried the gun that day for protection."[35]

It is well established that "official police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection . . . ."[36] "There is no constitutional right to be protected by the state against being murdered by criminals or madmen."[37] Public officials have been held not liable for negligent failure to issue firearms permits even where the person disarmed thereby is murdered.[38]

Not only will the provision for emergency certifications be nullified by police officials who are unwilling to recognize citizens' rights, but many handgun transactions will be defeated altogether by the existence of invalid local ordinances. The courts have repeatedly declared void local ordinances which conflict with and are preempted by state law on handgun sales.[39] Many of these ordinances remain on the books and are enforced despite repeated attorney general opinions that they are illegal.[40]

It is well established that "the right to defend oneself from a deadly attack is fundamental."[41] In declaring a handgun ordinance invalid as an interference with the rights to bear arms and to self defense, one court stated: "Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."[42] Another court has stated concerning the same rights: "The State can take no action which will unnecessarily 'chill' or penalize the assertion of a constitutional right and the State may not draw adverse inferences from the exercise of a consitutional right."[43]

A waiting period with routine police scrutiny violates the rights to life, to have arms, and to privacy. Wholly aside from these infringements, the proposed legislation is not based on any known constitutional power and contradicts the constitutional scheme of federalism. It seeks to criminalize private transactions in firearms which are wholly unrelated to interstate commerce. It would impose overreaching federal burdens on legitimate activities, despite the fact that the overwhelming majority of states have rejected such laws. S. 466 and H.R. 975 are precisely the kinds of violations that the Bill of Rights was adopted to prevent.

NOTES

1. Valley Forge College v. Americans United, 454 U.S. 464, 484 (1982).

2. United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938).

3. Koingsberg v. State Bar of California, 366 U.S. 36, 49 n.10 (1961).

4. Lovell v. Griffin, 303 U.S. 444, 452 (1938) states:

> The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphelts and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.

As the experience of the Revolution attests, pistols, rifles, and shotguns have also been "historic weapons in the defense of liberty," to use the above language. Moreover, "'pistol' ex vi termini is properly included within the word 'arms,' and that the right to bear such arms cannot be infringed. The historical use of pistols as 'arms' of offence and defense is beyond controversy." State v. Kerner, 181 N.C. 574, 107 S.E. 222, 224 (1921).

5. Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575, 583 n.6 (1983).

6. See S. Halbrook, THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT 59-60 (1984).

7. Pennsylvania Evening Post (Philadelphia), May 2, 1775, at 2, col. 2.

8. Id., May 9, 1775, at 3, col. 2. The same writer noted that at Lexington British regulars were defeated "by a handful of raw, undisciplined peasants."

9. Id., May 20, 1775, at 3, cols. 1-2.

10. Id., May 25, 1775, at 2, col. 1.

11. Id. June 24, 1775, at 2.

12. E. Ludlow, "To the Vilest Tool of the most profligate and tyrannical Administration that ever disgraced a Court. Inhuman Butcher!" Id., June 27, 1775, at 1, cols. 1-2.

A further editorial on Gage's proclamation stresses that an armed populace must keep government in check. "A Freeman," id. at 2, cols. 1-2 states:

> The opposing an arbitrary measure, or resisting an illegal force, is no more rebellion than to refuse obedience to a highway-man who demands your purse, or to fight a wild beast, that came to devour you. It is morally lawful, in all limited governments, to resist that force that wants political power, from the petty constable to the king. . . . They are rebels who arm against the constitution, not they who defend it by arms.

13. E.g., id., May 16, 1775, at 4, col. 2 includes the humorous advertisement: "A large quantity of Rifles for setting an edge to scythes . . . the great increasing Demand sufficiently proves them to be better and cheaper than any Stones . . . ."

14. "The Scheme of Amendments," Independant Gazetter, March 23, 1789, at 2, col. 1.

15. R. Lee, ADDITIONAL LETTERS FROM THE FEDERAL FARMER 170 (1788).

16. Minneapolis Star v. Minnesota Com. of Rev., 460 U.S. 575, 584 (1983).

17. 12 MADISON PAPERS 193-194 (Rutland ed. 1979).

18. "Remarks on the First Part of the Amendments to the Federal Constitution," Federal Gazette, June 18, 1789, at 2, col. 1.

19. See S. Halbrook, supra note 6, at 76-77.

20. 1 Tucker, BLACKSTONE'S COMMENTARIES (Appendix) 300 (1803). Henry St. George Tucker, another major commentator, wrote that "the right of bearing arms" was one of the "protections or barriers [which] have been erected which serve to maintain inviolate the three primary rights of personal security, personal liberty, and private property." 1 Tucker, COMMENTARIES ON THE LAWS OF VIRGINIA 43 (1831).

21. Scott v. Sanford, 60 U.S. (19 How.) 393, 417 (1857). "Nor can Congress deny the people the right to keep and bear arms, nor the right to trial by jury, nor compel anyone to be a witness against himself in a criminal proceeding." Id. at 450.

22. United States v. Cruikshank, 92 U.S. 542, 551, 553 (1876).

23. Id. at 553.

24. Presser v. Illinois, 116 U.S. 252, 265 (1886). Miller v. Texas, 153 U.S. 535, 538 (1894) repeats that "the restrictions of" the Second and Fourth Amendments operate "upon the Federal power."

25. Robertson v. Baldwin, 165 U.S. 275, 281-282 (1897).

26. United States v. Miller, 307 U.S. 174, 178 (1939).

27. Id. at 179.

28. Andrews v. State, 3 Heisk. (Tenn.) 165, 8 Am. Reports 8, 13 (1871) (citing Second Amendment and state guarantee).

29. Rhodes v. R.G. Industries, 173 Ga. App. 51, 325 S.E.2d 465, 466-67 (1985) states:

> Appellant first contends that "the trial court erred in holding as a matter of law that handguns are exempt from Georgia's product liability law because the lack of safety connected with such weapons raises a political, nonjusticiable question." Her last contention is that the trial court erroneously held as a matter of law that the R.G. revolver is not unreasonably dangerous when marketed to the general public. We disagree on both points. The Second Amendment to the U.S. Constitution guarantees the right of the people to keep and bear arms, as does Art. I, sec. I, Par. VIII of the Georgia Constitution 1983, which states that that right "shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne."

Accord, Martin v. Harrington and Richardson, 743 F.2d 1200, 1204 (7th Cir. 1984) ("the right of private citizens in Illinois to bear arms is protected"). See S. Halbrook, Tort Liability for the Manufacuture, Sale, and Ownership of Handguns? 6 HAMLINE L. REV. 351, 364-379 (1983).

30. State v. Kerner, 181 N.C. 574, 579, 107 S.E. 222, 225 (1921).

31. See Motley v. Kellogg, 409 N.E.2d 1207, 1210 (Ind. App. 1980) (police chief "denied members of the community the opportunity to obtain a gun permit and bear arms for their self-defense."); Buffa v. Police Dept. of Suffolk County, 47 A.D.2d 841, 366 N.Y.S.2d 162 (1975) ("withdrawal of police approval" insufficent reason); Storace v. Mariano, 35 Conn. Sup. 28, 391 A.2d 1347, 1349 (1978) ("in my opinion, he is an unsuitable person to carry a gun" insufficient reason); Salute v. Pitchess, 61 Cal.App.3d 557, 132 Cal.Rptr. 345, 347 (1976) (sheriff may not determine in advance "that only selected public officials can show good cause" for permit); Schwanda v. Bonney, 418 A.2d 163, 165 (Ma. 1980) (criteria not mandated by state statute may not be imposed); Iley v. Harris, 345 So.2d 336, 337 (Fla. 1977) (permit must be based on criteria, not discretion).

32. Schubert v. DeBard, 398 N.E.2d 1339, 1341 (Ind.App. 1980).

33. Id. at 1341 n.5.

34. Reilly v. State, 59 N.J. 559, 284 A.2d 541, 542 (1971).

35. Commonwealth v. Lindsay, 396 Mass. 840, 489 N.E.2d 666, 669 (1986).

36. Warren v. District of Columbia, 444 A.2d 1, 8 (1981).

37. Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).

38. Nunn v. State, 35 Cal.3d 616, 200 Cal.Rptr. 440, 677 P.2d 846 (1984).

39. E.g., Doe v. San Francisco, 186 Ca. Rptr. 380, 136 Cal.App.3d 509 (1983) (ordinance prohibited any further handgun sales); Dwyer v. Farrell, 193 Conn. 7, 475 A.2d 257 (1984).

40. E.g.s, 1982-1983 Report of the Attorney General (Virginia) at 755 (1983); 1981-1982 Report of the Attorney General (Virginia) at 112 (1982).

41. United States v. Panter, 688 F.2d 268, 271 (5th Cir. 1982).

42. City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744, 745 (1972).

43. State v. Rupe, 101 Wash.2d 664, 683 P.2d 571 (1984).

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Legislative Representative

June 17, 1987

The Honorable Howard M. Metzenbaum
United States Senate
Russell Senate Office Building
Room 140
Washington, D.C. 20510

Dear Mr. Senator:

On behalf of the United Federation of Police, which has over 30,000 members, I would like to express our support of S.466. I had the opportunity to attend the hearings which were held on June 16th and would like to state that our organization agrees with all of the testimony that was presented, with the exception of that of Robert Kliesmet, President of the International Union of Police, of which I am a former officer. No police officer who truly has the best interests of his fellow police officers could object to S.466.

I would like to respectfully request that our organization's views be submitted for inclusion in the official record, and that we be kept informed of any future proceedings pertaining to this legislation.

Thank you for your consideration.

Respectfully,

Robert D. Gordon

Robert D. Gordon
Secretary/Treasurer

RDG:eho

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Immediate Past President
John J. Norton
San Francisco, CA

Jerald R. Vaughn
Executive Director

July 2, 1987

Senator Howard M. Metzenbaum
United States Senate
Committee on the Judiciary
Washington, DC 20510-6275

Dear Senator Metzenbaum:

Thank you very much for inviting the International Association of Chiefs of Police to testify before the Subcommittee on the Constitution concerning S. 466, the Handgun Violence Prevention Act of 1987. This is a most important piece of legislation; we have worked with Representative Feighan to secure co-sponsors in the House of Representatives. We sincerely hope that both the House and Senate will take favorable action on this bill during the 100th Congress.

We would like to clear up one matter that was addressed by Witness Ron Johnson, from the Florida House of Representatives, at the June 16th hearing. In discussing a preemption bill that he had introduced in the last session of the florida legislature, Mr. Johnson stated that Florida law enforcement favored the decontrol of handguns and had supported both the preemption bill and a bill which deregulated the possession of concealed weapons. It is our understanding that this is not true.

The Florida law enforcement community had opposed handgun deregulation for years but withdrew their opposition to Mr. Johnson's bill when it became clear that there were enough votes to pass the legislation. They traded their support to secure some amendments which they felt were absolutely essential to the legislation as introduced.

I have enclosed a letter from Chief Frederick J. Walsh of the Orlando Police Department. Chief Walsh was a participant in the negotiations and confirms that Florida Law Enforcement does not support the concept of handgun deregulation. We request that this letter be included in the official record of the hearing in order to give the Subcommittee and full Committee members a more complete and accurate picture of the Florida experience.

Thank you again for your efforts to promote effective firearms management in this country. If we may be of further assistance to you, do not hesitate to contact us.

Sincerely,

Jerald R. Vaughn
Executive Director

City of Orlando

POLICE DEPARTMENT

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TELEPHONE
(305) 849-2470

May 29, 1987

Mr. Jerald R. Vaughn
Executive Director, IACP
13 Firstfield Road
P. O. Box 6010
Gaithersburg, MD 20878

Dear Jerry:

I am writing to express my dismay over the representations made in the attached article which appeared in the May 1987 edition of the NRA publication, American Rifleman. As you might expect, the article is substantially misleading as to what actually happened in Florida. As you may already know, the Florida Police Chiefs Association successfully fought the gun decontrol legislation for years. Because of the support of Governor Graham, the bill was vetoed after passage in 1985 and an override attempt was narrowly defeated in 1986. In 1987, our new Governor, Bob Martinez, unfortunately took a different posture, indicating that he would not veto such a measure if passed under his administration. At that point, the gun legislation had a sufficient number of sponsors to ensure passage. The Chiefs Association, in addition to opposing the entire concept, had problems with 15-20 individual provisions within the bill. The prime sponsor of the bill indicated that he would accept most of our proposed amendments if we would withdraw our association's opposition to the amended legislation. Faced with the alternative of sure passage of the bill in its original form, the association decided to compromise on obtaining the best law possible under the circumstances. Hence, the bill passed as amended.

Most of the major city law enforcement heads independently took strong positions against the legislation, but the association itself honored the compromise agreement. No law enforcement head of which I am aware actually agreed with the gun decontrol measures. If you need documentation or substantiation of these facts in order to fight in another forum the proliferation of handguns on the streets or otherwise to counteract this type of propaganda, please let me know and I will be happy to assist you in whatever way I can.

Sincerely,

Chief Frederick J. Walsh
Orlando Police Department

FJW:JML:djh

c: Chief Troy Surrency/w. attach.
Chief William Liquori/w. attach.
Willis Booth, Executive Director/w. attach.
FPCA Legislative Committee/w. attach.

Florida Gun Owners And

Pro-gun bills in the Florida legislature are being backed by all of that state's major law enforcement groups.

By Ted Lattanzio

IN the past year, increasing attention has been paid to both actual and contrived tensions between the nation's firearms owners and law enforcement, largely centered on congressional debate over the McClure-Volkmer Firearm Owners Protection Act to reform the federal firearm laws.

Though fanned by a hostile media, aided and abetted by a national advertising campaign sponsored by Handgun Control, Inc., that focused on NRA's alleged rift with police, that myth was exploded in Florida at an historic press conference featuring representatives of the state legislature, every major law enforcement group in the state, and officials from the NRA Institute for Legislative Action and the Unified Sportsmen of Florida.

At the conference, ringing endorsements were made by all present in support of flagship legislation that would preempt local firearms laws and provide for a uniform, fair licensing system for the issuance of permits to carry concealed firearms.

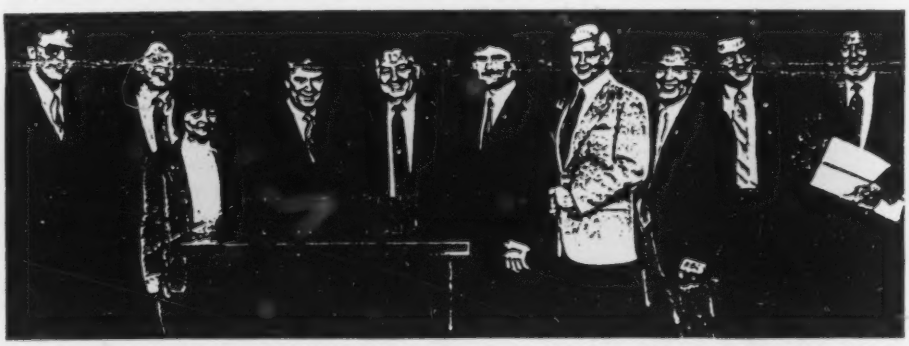
Ironically, the joint announcement took place almost simultaneously with a nationwide call by the Executive Director of the International Association of Chiefs of Police (IACP) for its members to exercise a new role: *be NRA's watchdog*.

In that legislative alert designed to incite law enforcement opposition to statewide firearms preemption legislation, IACP head Jerry Vaughn warned that "NRA will be turning its attention toward weakening the ability of municipalities to regulate gun ownership and possession within their own boundaries," and cited the state of Florida as particularly "vulnerable."

"You should be monitoring NRA activities in your states" and ". . . let me know if there are any major developments of which I should be aware," directed Vaughn in the police chiefs' alert. That order to keep NRA under surveillance promises to be merely the opening salvo in IACP's efforts to drive a wedge between firearms owners and law enforcement officials at both state and local levels.

Vaughn somehow neglected to point out that 32 states have approved preemption legislation that gives the states sole jurisdiction over firearms laws, thus reversing or negating "Morton Grove-type" firearms bans at the local level. With one exception, these pro-gun initiatives have not previously been opposed by state law enforcement agencies. In fact, the reverse has occurred—state law enforcement agencies have supported and aided in the passage of preemption legislation.

In a virtual defiance of Vaughn's edict and in a show of unity with the state's firearms owners, every major law enforcement organization in Florida—including IACP's affiliated Florida Police Chiefs Association—had already lined up in support of preemption and a bill to reform the state's inequitable concealed carry laws. Prime sponsors of the pro-firearms bills protested Vaughn's actions in unequivocal terms (See related story, *Official Journal*, pp. 56-57). And an over-



Press conference attendees were (l.-r.): Richard Manning and Wayne LaPierre, NRA-ILA; Marion Hammer, Unified Sportsmen of Florida; Reps. Ron Johnson and S.L. Clements; John Fuller, Florida Sheriffs Ass'n; Don Fish, Florida Police Benevolent Ass'n; Fred Johns, Florida Dept. of Law Enforcement; Charles Salerno, Fraternal Order of Police; and Willis Booth, Florida Police Chiefs Ass'n.

Lawmen Stand Together

Florida Representatives Ron Johnson (l.) and S.L. "Spud" Clements have as cosponsors of their pro-gun bills an overwhelming majority of members of both houses. This wide support is a reflection of the unity among Florida firearm owners and law enforcement.

whelming majority of the members of the Florida House and Senate have cosponsored the bills, virtually assuring passage of these landmark initiatives as endorsed by the NRA Institute for Legislative Action and Unified Sportsmen of Florida.

No doubt to the chagrin of IACP's political leadership, the Florida Sheriffs Association, the Florida Peace Officers Association, Florida Department of Law Enforcement, Fraternal Order of Police, Police Benevolent Association and the Florida Police Chiefs Association support these long-sought reforms of the state's harsh gun laws.

This historic agreement between firearms owners and law enforcement agencies—forged during a series of meetings among the groups to resolve any differences that existed—will, in the words of representatives from both interests, benefit Florida citizens and visitors and aid police. The press conference received statewide coverage, though some anti-gun media attempted to minimize, distort and destroy the clear demonstration of unity among the participants.

The preemption bills, **H.B. 251** by Reps. Ron Johnson and S.L. "Spud" Clements, and **S.B. 254** by Sen. Dick Langley, will prohibit cities, counties and municipalities from adopting "gun control" laws. Further, the bills will restore the rights of law-abiding citizens in Broward, Dade, Palm Beach and Pinnellas counties, among others, where severe restrictions are now in effect making Florida a patchwork of gun laws.

H.B. 253 and **S.B. 253**, also by Johnson, Clements and Langley, would set uniform criteria for issuing concealed carry licenses, and would empower the Division of Licensing in the Secretary of State's office to act as the sole issuing authority. Currently, carry licenses are granted by county commissions often using arbitrary and discriminatory standards and prohibitive requirements to deny concealed carry permits.

Under the proposed licensing bill, applicants shall be issued or denied a license within 90 days of making application. Denials may only be made if the applicant is in one of several proscribed classes, including felons, drug or alcohol abusers or those repeatedly arrested for violent acts. Applicants must show proficiency in handling a firearm.

Carrying a concealed firearm without a state permit would remain a felony punishable by a $5,000 fine and five years in prison.

Speaking at the press conference held in Tallahassee to unveil the legislation, Rep. Ron Johnson of Panama City said the need for the self-protection bills is "obvious to a lot of people in the state of Florida who are called 'victims'—people who silently cry out for the ability to protect themselves."

Commenting on the fact that the preemption bill would wipe out "cooling off and waiting periods" in Dade, Broward and Palm Beach counties, Johnson said, "All you're doing (with local restrictions) is keeping an honest law-abiding person from buying a gun." The pro-gun lawmaker added, "The criminal is going to buy a gun like he always had, on the black market."

Rep. Johnson's remarks were echoed by all law enforcement leaders in attend-

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About The Author

TED LATTANZIO is director of State and Local Affairs for the NRA Institute for Legislative Action. Working out of NRA Headquarters in Washington, D.C., his staff of legislative and political experts, aided by the NRA Field Services Division and its staff of Field Representatives and volunteers, provide assistance to NRA affiliates and members on the state and local levels.

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and .458 bullets. A .375 solid, he said, traveled 5½ ft. in a buffalo, through the rumen, ribs, shoulder and halfway up in the neck. It was undamaged. In contrast, a 300-gr. soft-point expanded in typical Bear Claw fashion, but penetrated only 2 ft. and was found in the middle of the rumen (paunch). One cannot really expect more from a bullet that expands that well. Solids are the thing to use for raking shots on buffalo, in my experience.

Trophy Bonded Bullets Inc. (P.O. Box 262348, Houston, Tex. 77207, Tel. 713 645-4499) offers Bear Claw expanding bullets in diameters ranging from 7 mm to .475 cal., including 8 mm and 9.3 mm. Several weights are available in most calibers. The Sledgehammer solids are made in 9.3 mm, .375, .411, .416, .423, .458, .468 and .475 cals.

They are not inexpensive. Prices range from $1.68 to $2.34 each, compared to perhaps 20 cents apiece for conventional bullets. But then they are not meant for plinking, target work, varmint shooting or for meat-hunting the lesser varieties of big game. Nor would I use them on pronghorn and such. They are made for serious trophy hunters, and for those who delight in tackling dangerous game. Compared to the total cost of an African safari, an Alaskan or Canadian foray, or even of a guided hunt for trophy whitetail closer to home, the price of the bullets is not of much significance. For the hunting of dangerous game they would still constitute dirt-cheap insurance at twice the price.

Jack Carter meant his Trophy Bonded big game bullets to be the very best, the Rolls Royce of bullets. Has he succeeded? Where non-expanding bullets are concerned, I would have to say yes. For use on large, thick-skinned dangerous animals such as elephant, rhino and buffalo, I believe his Sledgehammer solid bullets are unexcelled. When it comes to soft-nose bullets, the answer is more complicated. If one takes into account expansion, frontal area and destructiveness combined with penetration, then the Trophy Bonded Bear Claw bullets are unsurpassed. But when the utmost penetration possible is required from a soft-nose bullet, both the Nosler Partition, and, in calibers for which they are available, the Swift A-Frame, are superior.

If I were going to hunt African buffalo with soft-nose bullets in my .375 H&H, for instance, I would prefer to use the Swift 300-gr. A-Frame bullets. But for lion or any other large, thin-skinned game, I would choose the 300-gr. Trophy Bonded Bear Claw soft-points every time.

If Jack Carter's Trophy Bonded bullets are not world's best big game bullets for absolutely every application, they certainly come closer to that ideal than any others available. ■

Gun Owners And Lawmen

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ance. "I think any working policeman will tell you that the crooks already have guns," said Willis Booth, a former chief with 40 years of law enforcement experience and lobbyist for the Florida Police Chiefs Association. "If a criminal fills out an application and sends his application for a concealed weapon, he's the biggest, dumbest crook I've ever seen."

In representing the Florida Sheriff's Association, John Fuller commented that his group's previous concerns with the provisions in the concealed carry bill were addressed. Access by law enforcement to the records so that law enforcement could at all times find out whether or not a permit is valid and discretion on the part of the Secretary of State to deny the permit based on past criminal behavior were priorities that "have been accomplished in this bill," Fuller stated.

Wayne LaPierre, Executive Director of the NRA Institute for Legislative Action, joined Marion Hammer of Unified Sportsmen of Florida to speak for the state's firearms owners saying, "The two bills will protect the law-abiding Floridians from discrimination while addressing the legitimate needs of the law enforcement community."

In an interview following the press conference, Hammer spoke candidly about the significance of the joint announcement saying: "We have demonstrated, once again, the ability of NRA/USF to work together with law enforcement—our natural allies—to achieve a common goal. While some of us approach that goal from different directions and perspectives, when reasonable people sit down with a realistic and sincere desire to reach a solution, there is clearly a common ground upon which we may all stand together and serve our people without infringing on their rights and freedoms."

Although the press sought to find a flaw or "chink" in the agreement announced during the 30-minute conference, Hammer said that: "Their inflammatory 'when did you stop beating your wife' type questions found no mark and were responded to with sincere, positive statements of support.

"It has long been my contention that the media has embarked upon a course to drive a wedge between NRA and the law enforcement community for anti-gun motives, and they apparently have been aided by some national political figures, like IACP's Vaughn," said Hammer. "I believe the problems between NRA and law enforcement are primarily figmental and have been manufactured and contrived by the media, hostile to lawful firearms ownership and indeed the Sec-

ond Amendment itself," she added.

At least one reporter in an apparent quest for dissension, scurried off to probe the ranks of law enforcement in search of a dissenter who would denounce the agreement—and did, in fact, succeed. "So the news reports in some of the papers had an entirely different tone—it was created," Hammer added.

Hammer observed that such media fabrications could serve to strengthen the relationships between the police and firearms owners. "We are 'circling wagons' in Florida, and NRA and law enforcement are standing shoulder to shoulder again, and we are working closely with law enforcement in other states as well," she said.

The effort gained additional momentum when the Ft. Lauderdale City Commission voted unanimously to support the firearms bills. Ft. Lauderdale Mayor Bob Cox, in a letter to Gov. Bob Martinez, articulated a concern that Broward County officials who oppose the legislation might be communicating the wrong impression on Ft. Lauderdale's position.

Mayor Cox said, "Let me assure you that the City's official position has been and currently is that we believe this issue is too important to be fragmented among 67 counties to the detriment and confusion of both our residents and visitors." He pointed out the city had sued the County Commission over the "waiting period" ordinance enacted in a March, 1984, "gun control" referendum, and although the lawsuit was won in District Court, it regrettably failed in the Florida Supreme Court. Cox explained that the voters of Ft. Lauderdale, the largest city in Broward County, and a number of other Broward County cities voted against the gun ordinances.

Mayor Cox told the governor, "Please be assured of tremendous support for you in this matter by a great majority of the people in the State of Florida." Gov. Martinez has indicated support for the pro-gun legislation.

It is significant to note that national "gun control" groups clearly recognize that the debate has shifted from national to state levels where hard-fought campaigns, similar to Florida's, are being waged. Firearms owners should be ever-vigilant on their home turf since Handgun Control, Inc., recently announced the opening of regional offices in California and Minnesota to extend its reach into local firearms and hunting issues. And if Jerry Vaughn's directive takes hold in local law enforcement agencies where gun owners have not established any rapport or built a solid foundation based on mutual trust, firearms owner's rights could well be in jeopardy.

Take time now to discuss firearms issues with law enforcement to create a cohesion in your area that could mirror the Florida experience. ■

Two Farm Guns Of 1902

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80) told him about a Stevens he owned in his youth that opened, by design, when the trigger was pulled. He told his son he wished he still had it. Gene couldn't visualize his father's description of the gun and could find no reference to it. For 10 years he wrote everyone he could think of and posted "Wanted" notices in gun shows, but he didn't know the model name or number and drew a blank. In 1985, he found it briefly described in *Modern Guns—Identification & Values* by Quertermous. Then, armed with the model numbers, he wrote to the "Dope Bag," Contributing Editor C.R. Suydam told him the guns in question were made ca. 1902–1907 with prices of $8, $9 and $10 for the Models 160, 165 and 170, respectively. With this information, Schreiber advertised and received four responses.. He thankfully bought two well-used "trigger-actions" (160 and 165) and refinished them. All the time and expense of his search, acquisition and refinishing was, he says, "immediately repaid by the look on dear ol' dad's face when I handed him the guns."

The I.J. "ring-action" came to "Bill" first in 1953. He bought it from a gunsmith friend who knew nothing of its history, for $5, or two-thirds the original price. It was, and is, poorly reblued, the "long" thick-walled barrel had no choke, was ringed and rusty, and the chamber was so pitted that extraction was chancy. The toe of the stock was broken off and the buttplate missing.

Bill didn't care. He cut the buttstock off to a 12" pull, added a rubber pad and shortened the barrel to 18" for use as his "Jeep gun."

Such short-barrelled guns were novelties then (to say nothing of ring-actions) and, being short on cash, he soon sold it back to the gunsmith who promptly resold it to a stranger. Five years later, it mysteriously reappeared on the gunsmith's shelves; Bill had come into big money and repurchased it for "about $10." The gunsmith bored out the heavy barrel and installed a full-choked, chambered liner so the gun is "like new" inside but still awful outside. Bill uses it for clay birds and crows, and he will not chance selling it again.

The Stevens Models 160, 165 and 170 were listed in 12-, 16- and 20-ga., the last with 26" or 28" barrel lengths and the 12- or 16-ga. with 28", 30" or 32"—all choke-bored. The forged frames were color case-hardened, the exposed hammers were of the rebounding type, stocks and snap-on fore-ends were varnished walnut, and those of the 170, that had a grip cap, were checkered. The 160 had a plain extractor; the others had an automatic ejector that could be converted to "extract-only" by backing the ejector trip screw out of the frame two turns.

The most curious feature, of course, is the trigger action. With the gun closed and the hammer down, a single pull of the trigger, through a connected hook, draws the locking bolt back and allows the barrel to open. When the gun is closed and the hammer is manually cocked, the trigger hook is blocked by the sear and does not retract the locking bolt. Pulling the trigger in this mode results only in the expected release of the hammer and firing of the gun.

The system works no better than the conventional top-lever, its advantage is the elimination of the protruding lever itself and the resultant sleek profile. (Iver Johnson, too, must have liked that profile, for in 1904 it listed a 12- or 16-ga. look-alike "Trigger-Action" of its own.)

Like the above Stevens guns, the Iver Johnson "Semi-Hammerless" or "ring-action" lacked model designation on the gun itself.

From ca. 1902–1904, it was made in 12- or 16-ga. with plain walnut stock and

Gene Schreiber's interest in the novel Stevens single shot began with his father's tales.

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